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THE

Madras General Sales Tax Act

(with Rules, Forms and Notifications)

and

a valuable introduction, critical, analytical and
exhaustive commentaries, an index and
an analytical table.

BY

V. SUNDARA VYAS, B.A., B.L.,
VAKIL,
SIVAGANGA.

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To

Sri. N. S. Viswanathier, B.A., B.L.,
Sri. Gita Vilas,
Madura,

a South Indian Lawyer who combines an orthodox life with sound legal and literary scholarship.

This Book is dedicated by his
dutiful and loving son
The Author.

AUTHOR'S PREFACE

In the following pages I am presenting to the legal and mercantile public exhaustive commentaries on the recent taxation enactment of our Legislature—The Madras General Sales Tax Act.

I have made the fullest use of caselaw under analogous enactments whose wording is similar to the words used in the present enactment, e.g., the Income Tax Act, the Penal Code, the Code of Civil Procedure, the Code of Criminal Procedure, etc. I have spared no pains to make the commentaries useful alike to lawyers, businessmen and officers administering the Act. I have ventured to offer my opinions on almost all questions relating to the application of the Act that may crop up for decision before our courts, and before the tribunals constituted under the Act. Care has been taken to point out the scope and application of the Act in relation to Exports, Imports, Internal trade and special forms of mercantile contracts. The Act and the rules have been analytically summarised. The sections themselves have been grouped for facility of discussion, a general title and a general note being prefixed to every such group. Every section is summarised in my own words. Extracts from the authorised reports of Legislative debates, report of the Select Committee and communiques issued by the Government have been woven into the commentaries in order to make the book really useful. A table is annexed which gives a bird's eye view of the entire book. The index has been made as exhaustive and useful as possible.

My thanks are due in no small measure to my brother Sri. V. Narayanan, B.A., B.L., Vakil, Madura who has not only shared with me the responsibility for the preparation of MSS. for the press, but has practically piloted the book through the press. I have consulted Stroud's Judicial Dictionary, Maxwell's Interpretation of Statutes, Digests of Cases both English and Indian, Reports of Cases English and Indian, the Concise Oxford Dictionary, Comstock's valuable book on "Taxation in the Modern State" and many other books, and my thanks are unreservedly due to the authors and publishers of the books. My thanks are also due to my friends in Sivaganga and in Madura for their valuable suggestions and to the authorities of the Lenox Press for the neatness of printing.

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4—10—1939.

V. S. V.

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INTRODUCTION.

ORIGIN OF THE TAX.

"The General Sales Tax introduced in Rome by Augustus, the Sales Tax in the Kingdom of Naples in the Fifteenth Century, and the Spanish *alcavala*, (a general sales tax of the middle ages) went their unsatisfactory way and left their little trace"[1]. The modern sales taxes which have, since the War proved to be a successful fiscal expedient bear no relation to the sales taxes of earlier days. But, records of taxes imposed in "England by Pitt during the wars with France at the end of the 18th Century, and those imposed in the United States at the time of the Civil War give the only true historical background for the modern sales taxes[2]. The first country to introduce in some form the modern sales taxes was Germany. France, Belgium, Canada and Italy quickly followed and in the present day the tax is in operation in "twentyfive states of the United States of America, three Dominions of the British Commonwealth, twelve countries of Europe, and six republics of South America[3]. But the United Kingdom is the supreme example of a country that is free from this tax. Some of the Asiatic countries originally levied this tax but later on gave up this system of taxation.

FEATURES OF THE SALES TAX IN VARIOUS COUNTRIES.

The German 'Turnover Tax' and to a great extent the 'Sales Tax' levied in Czechoslovakia "is an example of a tax which included every type of transaction in the line of goods and services". But the French tax applied to industrial and commercial transactions and excluded agriculturalists and members of the liberal professions and employees. While the Sales Tax levied in Belgium and in Canada was on wholesalers and manufacturers, the States of the American Union confined the tax to retail transactions. In the case of the United States of America the tax is of a *provincial* nature though exemption is granted in the case of trade between States. The tax is in the generality of cases a national tax. In Australia, however, it is a Federal tax. In all countries, exemptions from taxation has been granted. In Germany certain foodstuffs, raw materials and other imported necessities were exempt. In France, not only sales of bread and certain special commodities were exempt, but agriculturists, members of the liberal professions and employees were exempt from taxation. In Belgium, exports were exempt from tax as also some kinds of imports. Sales of bread, flour, potatoes, water, gas, electricity, farm products, coal and other specified products were also exempt in Belgium. In Poland, welfare agencies, export organisations as also agricultural operations were excluded. While in some countries like France, the tax is confined to cities, in several countries the tax is levied both on urban and on rural population as well. The rate of tax has varied considerably. In Germany the tax was as low as ·5% in 1918 and it mounted to 2.5% in 1928. In 1928 the rate of tax in France was 1.1% while in Belgium and in Czechoslovakia it was 1%. The rate varied from 1% to 5% with reference to the nature of articles and transactions in Poland. In Czechoslovakia and some other countries the general sales tax was accompanied by a luxury tax of about 15% on certain articles classed as luxuries. In India itself there is an old and well established custom known as *mahimai* on the part of businessmen to put by three pies per rupee of turnover for charitable purposes. But mahimai thus collected did not go into the coffers of the State.

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[1] Comstock "Taxation in the Modern State" p. 113.

[2] *Ibid* p. 113.

[3] Premier's speech in the Legislative Assembly on 8th May, 1939. (Legislative Assembly debates Vol. XII No. 8 at p. 469).

SALES TAX AND INCOME-TAX.

In the modern system of taxation the 'Sales Tax' sometimes called also the 'consumer's tax' is next in importance only to the Income-tax. Taking the figures for the year 1936, while the Sales Tax in France approximated in yield to the Income-tax in point of return, in Germany the yield from the Sales Tax was nearly twice as much as the yield from Income-tax. In Czechoslovakia, the revenue from the Sales Tax exceeded the revenue from income tax by about 50%. In Italy, the Sales Tax yielded only one fourth of the income derived by the State from Income-tax.

But these two taxes are instances of two distinct schemes of taxation. While the Sales Tax is an instance of an *indirect* Tax[4] "a tax demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another[4]", the Income-tax is an instance of a *direct* tax, a tax demanded from the very person who, it is intended should bear it[4]. Secondly, while the Sales Tax is levied usually on sales and is thus unrelated to the profits realised by the assessee, the Income-tax is levied on the income or profits[4]. One practical effect of this distinction is that bad debts are not usually excluded in the levy of the Sales Tax while the Income-tax Act contains provisions for the exclusion of bad debts in the determination of income for assessment. So far as the Indian Constitution is concerned, Income-tax is a federal subject for purposes of taxation[5] while, a tax on the Sale of Goods is a provincial subject for purposes[6] of taxation.

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[4] See Mill's Principles of Political Economy p. 823 (Ashley Edition).

See also A.I.R. 1928 P.C. 282. A percentage tax on the gross revenue of coal mines held indirect tax while Income tax is direct tax.

[5] See Government of India Act 1935 S. 100 Sch. VII list I item 54.

[6] *Ibid* S. 100 and Sch. VII list II item 48.

SALES TAX, TURNOVER TAX, TAXES ON THE SALE OF GOODS AND TAXES ON SALES OF GOODS.

The expression '*sales tax*' as its name implies, is a tax levied on sales and the words comprehend a good deal more than would be understood by a "*tax on the sale on goods.*" A '*sales tax*' may be a mere producers' or manufacturers' tax covering services and enterprises. A '*tax on the sale of goods*' on the other hand, necessarily excludes a tax on services, but includes a tax both on retail dealers and wholesalers as well. The words '*a tax on the sale of goods*' are very general and they differ in meaning from the words '*a tax on sales of goods generally*' and there is no good reason for confining the meaning of the words "*tax on the sale of goods*" to a '*turnover tax*' on the gross sale proceeds only[7]. A tax on "*sales of goods generally*" seems to be restrictive in meaning and applies to a tax on gross proceeds only. Further, a tax on the '*sale of goods*' excludes other forms of transfer like mortgages, leases, etc., which are comprehended by the term '*turnover tax*'. Again a '*turnover tax*' may include fees and commissions which the terms "*sales tax*" or "*taxes on the sale of goods*" may not comprehend.

It may be noted that the words used in item 48 in list II (Provincial List) in the Government of India Act (1935) is "*taxes on the sale of goods*" while the proposals for Indian Constitutional Reform (White Paper) and the report of the Joint Select Committee used the words "*taxes on the sale of commodites and on turnover*". The discussion of the terms has not got much practical bearing in view of the fact that the Madras General Sales Tax Act defines the terms 'goods' and 'turnover' and confines the tax to *sale of goods*, the levy of tax being calculated with reference to turnover of goods sold.

OBJECT OF THE MADRAS GENERAL SALES TAX ACT.

This Act is a measure of taxation intended to augument the revenues of our Province. The Congress Party entered the Legislatures with a view to give effect to certain programmes embodied in their Election Manifesto, the chief among which are the introduction of total prohibition, and substantial reduction of land tax. There was also the need to reform the system of education and to introduce a new system of education known as the Wardha Scheme. Prohibition had been introduced in Salem and two other districts and there was need for an extension of the scheme to other districts. But total prohibition would result in a diminuition of the revenues by nearly four crores and a remission of four annas in the rupee in land revenue would still further reduce the revenue by nearly 1½ crores. Further, in the budget-estimate for the year 1939—40, there was a deficit of nearly seventeen lakhs. There was consequently "need for finding fresh sources of revenue to meet the increasing demands made on the Government[8]." This Act is one of the series of taxation measures which the Madras Government brought in the Legislatures, the other measures being, an Entertainments Tax, a tax on the Sale of Electricity, Sales of Motor Spirit Taxation Act and the Tobacco Act. The Premier explained[9] that the right to find additional sources of revenue to make up the deficit created by prohibition was implied in the endorsement of the policy of prohibition by the Legislatures and in the Schedule annexed to the Government of India Act, it is not possible to discover "any more paying, more elastic and more satisfactory measure than the sales tax[10]." For discussion on some questions of general interest in respect of the Act see footnotes below.

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[7] Per Sulaiman J. in *re* C.P. Motor Spirit 49 L.W. 36 (F.C.) See also observations of the Chief Justice of India in the case.

Economists on the Sales Tax.

While Comstock holds that "Sales Taxes have proved useful because they yield enormous sums even when they are imposed at a low rate," and that the slight adverse influence of these taxes on the standard of living or on the industries of the country have not interfered with the financial success or the popularity of the taxation measures,[11] Seligman, the celebrated Economist has expressed himself very strongly against taxation of sales. He says "a general Sales Tax is a discredited remnant of an outworn system; it is essentially undemocratic in nature and it would, if enacted, exaggerate rather than attenuate the present inequalities of wealth and income." In India itself, while Dr. P. J. Thomas claims "that the sales taxes are not injurious and that even certain sales taxes which are regressive in incidence are justifiable in the peculiar conditions of the country," other economists hold the view that the sales taxes would cripple trade, promote industrial unrest, and increase unemployment.

Probable Yield from the Tax.

Estimates of the probable income from this tax have varied widely. While the Government expect only a revenue of one crore and a half from the tax[12] the South Indian Chamber of Commerce[13] estimates the

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[8] Statement of objects and reasons.

[9] Speech in the Madras Legislative Assembly on 31—3—39 (Legislative Debates Vol. 12 No. 1 p. 49).

[10] Premier Speech in the Legislative Assembly on 31—3—39. (Legislative Debates Vol. XII No. 1 p. 51).

[11] Comstock "Taxation in the modern state" pp. 36, 37 and 123.

[12] The calculation the Government is made in the following way. The average purchasing power per head in India is about Rs. 50 annually. The population of the Madras Province is nearly 4 crores. The total purchases come to about 200 crores. Allowing a reduction of 75% for exemptions, the taxable purchase is Rs. 50 crores. Taking the number of stages through which an article passes to be four on an average, the taxable turnover is Rs. 200 crores and the income is 1½ crores. [See Speeches of the Premier and Mr. Prakasam in the L. Assembly on 12th May and in the L. Council on the 17th May. Legislative Assembly Debates Vol. XII No. 11. pp. 797-799, 833-834. Legislative Council Debates Vol. VIII No. 6 p. 356.]

[13] The estimate is made as follows: Taking the foreign trade of our province which stands at Rs. 54 crores as the basis for calculation, and multiplying the figure 15 times in order to determine the volume of internal trade, the total turnover is calculated at 800 crores. Leaving 25% of the turnover is non-taxable, the taxable turnover is estimated at Rs. 600 crores and the tax is expected to yield nearly three crores (Memorandum of the South India Chamber of Commerce presented to the Premier on 29th May.)

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probable annual yield at three crores. Mr. T. A. Ramalingam Chettiar has however estimated the probable yield at Rs. 10 to 15 crores[14]. In the absence of any reliable statistics, it is unsafe to speculate on the probable income. The two unreliable items are firstly, the number of turnovers through which goods pass and secondly, the deduction due to exemptions. But it seems however, that Mr. T. A. Ramalingam Chettiar has somewhat over-estimated the yield and he has not even made the necessary deduction in respect of exemptions.

Criticisms against the Madras General Sales Tax Act answered.

Perhaps no measure of taxation has been subject to such severe criticisms as the Madras General Sales Tax Act. Roughly speaking, the various criticisms levelled against the Act in the press, platform and in the Legislatures fall into two groups—firstly, criticism of the principle of the enactment, i.e., taxation of sales and secondly, criticism of the enactment itself with reference to its provisions in detail.

(i) Criticism of the Principle of the Act.

In the first place, a general sales tax offends the four canons of taxation formulated by Adam Smith, i.e., ability to pay, certainty of incidence, administrative convenience, and economy. The Colwyn Committee appointed to investigate the taxation system in the United Kingdom denounced the Sales Tax as offending the fundamental principle of taxation—ability to pay. This is however an academic objection which the Sales Tax shares with other indirect taxes. Secondly, it is a regressive tax, and being a tax on consumption it tends to raise prices, promote labour unrest, increase agricultural indebtedness and thus hit the poor classes. But the working of Sales Taxes in European countries shows that in the long run the adverse effect on the consumer or on the poor people is slight. Thirdly, the view is held that the middlemen or the intermediary links in internal or foreign trade would get extinguished by this tax. It is also said that the tax would reduce the number of transfers and thus produce "vertical combinations." Theoretically the argument is correct but, in actual practice it is found that "something weightier than 1% or 2% difference is necessary to eliminate any one type of business." The Premier even justified the elimination of intermediaries who, in his view "are parasites gambling in trade, and he claimed that their elimination would lead to a healthy reorganisation and integration of business"[15]. Fourthly, it is said that the tax would lead to the migration of business to neighbouring provinces and states. But, as the Premier explained in the Legislative Assembly, the levy of sales taxes at a low percentage would not make it worth while on the part of business-men to shift their business to neighbouring states and provinces[16]. The fundamental and moral justification for the levy of the Sales Tax is that it reconditions our tax system on sounder principles by "broadening the basis of taxation"[17]. In the words of the Premier, the levy of the Sales Tax is a part of the scheme for readjusting the taxation burden on the people of our Province[18]. Land revenue and excise, the chief sources of revenue for our Province are unjust taxes, the former being an excise on the production of foodstuffs, and the latter being a 'sales tax' on the sale of drink[19] borne by only by 3 to 5 million people[20]. The mercantile community who have the capacity to bear the tax burden contributes not more than a few lakhs of rupees to the Provincial revenues, their contribution of nearly a crore and a half as Income-tax being paid only to the central exchequer[20]. The levy of Sales Tax, would, it is claimed by the protogonists of the tax have the effect of shifting the tax burden from the shoulders of the poor to the merchant class and to some extent on the consumer class. When there is a large margin of profit, competition among the mercantile community would ensure the payment of the tax from the margin of profits and businessmen would retain the burden so far as they could[21] and they would transfer the burden to the consumer when they could not bear it. This is another peculiarity satisfactory feature of this Act.

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[14] Mr. T. A. Ramalingam Chettiar estimates the income from land in the province at Rs. 100 crores and the trade of our province at Rs. 400 crores. Allowing for four or five turnovers he estimates a total turnover at Rs. 2,000 crores and a consequent income of about Rs. 10 crores. (Legislative Council Debates Vol. VIII No. 6 p. 387).

[15] Premier speech in the Legislative Council on 19th May. (Legislative Council Debates Vol. VIII No. 8 p. 520). See also Comstock "Taxation in the modern state" p. 117.

[16] Premier's speech in the Legislative Assembly on the 1st April (Legislative Assembly Debates Vol. XII No. 2. pp. 182, 183).

[17] Speech of Dr. P. J. Thomas in the Legislative Council on 19th May. (Legislative Council Debates Vol. VIII No. 8 pp. 523 & 524.)

[18] Speech of the Premier (Legislative Council Debates Vol. VIII p. 361)

(ii) Criticism of the Provisions of the Act.

Some of the general criticisms against the provisions may be disposed of. It is said that the field for the proper levy of the Sales Tax should be prepared by an enactment for the compulsory registration of merchants. It can be readily admitted that such registration would lead to the efficient working of this Act. But the absence of such provisions does not detract from the value of this taxation measure. Secondly, a tax of uniform incidence does not satisfy the test of ability to pay and the tax can be graded. There is some force in this objection and as a complement of this tax the Government may bring in another Act taxing turnover in respect of luxury articles at a higher percentage. Detailed criticism related to absence of exemptions or inadequacy of exemptions. To start with the exemption of commodities, the absence of any provision exempting food-stuffs and other necessaries of life deserve notice. "Even a rich country like the United States of America has introduced specific provisions exempting such commodities of necessity as cereals, meat, milk, bread and sugar"[22]. In some countries "agricultural products and other natural products have been exempted"[22]. But the only exemption granted in favour of the agriculturist in the present Act is the proviso to S. 2 (i) providing that the proceeds of the sale of agricultural and horticultural produce in a limited class of cases is to be excluded in the determination of turnover. In the Madras Legislative Council an amendment to exclude foodstuffs from the operation of the Act was negatived. As the Premier pointed out, the effect of such an exemption would be only to increase administrative difficulties without conferring adequate advantage, for while the villager who usually spends only a few rupees every month in his purchase of commodities pays a few annas as tax, great difficulties would be caused to the State in the calculation of turnover[23].

Secondly, a plea was put forward for the enlargement of exemptions so as to exclude exports of both raw materials and manufactured articles. The Sales Tax in its application to articles of export would affect the "competitive strength (of our province) in the matter of supply to neighbouring Provinces"[24] States and even Foreign Countries. The Government to some extent reorganized the force of this objection and incorporated provisions in the bill in the Select Committee stage allowing a rebate in

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[19] Speeches in the Legislative Council on the 17th to 19th May by the Premier and Dr. P. J. Thomas. (Legislative Council Debates Vol. VIII No. 6 to 8 pp. 457, 361 & 523).

[20] Speech of Premier in the Legislative Assembly on 1st April (Vol. XII part 2 pp. 176 and 181).

[21] Premier's speech in the Legislative Assembly on the 1st April Vol. XII No. 2 p. 182. See also No. 8 p. 573.

[22] Memorandum of the South Indian Chamber of Commerce.

[23] Premier's reply in the Legislative Council on 18th May. (Legislative Council Debates Vol. VIII No. 7 p. 495).

[24] Memorandum of the South Indian Chamber of Commerce.

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respect of certain articles (S. 7) and provided also for the levy of tax at only one point in respect of hides and skins which are also articles of export. (S. 6). It must however be admitted that the exemptions do not go far enough. For instance, copra and coconut though they are articles of export do not get any exemption. In the Legislative Council amendments to extend the benefit of S. 6 to groundnut, onions and turmeric and timber which are articles of export were negatived. In view of the infant nature of the sugar industry a plea to extend the benefit of S. 6 to sugar and jaggery was put forward but it was unsuccessful. The Premier resolutely set his face against any extension of the list of exemptions on two grounds. Firstly, he held that in view of the low incidence of the tax exports are not likely to be affected. Secondly, the Act is a taxation measure and not a measure intended to protect one industry or trade in preference to another[25].

Coming to the exemption as applied to "Persons" the absence of provision exempting co-operative societies from the purview of the Act was subjected to criticism in the Legislatures. But the Premier held that the proper way of helping co-operative societies is by granting stipends and other kinds of special help and "not by giving exemptions from the normal incidence of trade[26]. The need for exempting a territory like British Cochin in view of the nearness of the place to the Cochin State was pointed out in the Legislative Council. The Premier rightly opposed the exclusion of British Cochin from the purview of the measure and felt that business may not prove to be so mobile as to move to the State in view of the tax[27]. While considering the exemptions, it is necessary to mention that the exemption limit in relation to turnover came in for a good deal of comment and the need for raising the exemption limit to Rs. 20,000/- was put forward in the Legislatures[28].

Another major criticism of this Act was with respect to the cumulative character of taxation. On the analogy of the Bombay Sales Tax Act an unsuccessful attempt was made in the Legislative Assembly to confine the levy of tax in the Act to one point, 'retails sale to the consumer'[29]. But, from the point of administrative convenience, taxation of wholesalers in preference to retail dealers has much to commend itself. Wholesalers maintain proper accounts and the determination of turnover and the collection of tax would be easy. But the income to the State would be inadequate unless the rate is fixed sufficiently high. Taxation at the retail stage has nothing to commend itself.

Another line of major attack against the provisions related to the rate of the tax, the percentage of the tax and the exemption limit of turnover[28]. But the Premier being anxious for a decent return of the tax resolutely stood against all attempts to lower the rate of tax or the percentage of tax or to raise the exemption limit. Some of the minor criticisms against the Act relate to the hardship consequent on the provisions relating to the maintenance of accounts by small traders, the 'inquisitional' powers given to officers in S. 14 and the non-exclusion of bad debts in the determination of turnover, and the other matters which are left to be provided by rules framed under this Act[30].

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[25] Premier's speech in the Legislative Council on 19th May. (Legislative Council Debates Vol. VIII No. 8 p. 505).

[26] Premier's speech in the Legislative Council in 18th May. (Legislative Council Debates Vol. No. 7 p. 463) and Legislative Assembly Debates Vol. XII No. 9 pp. 623-626.

[27] Premier's speech in the Legislative Council on 18th May. (*Ibid* p. 467).

[28] See commentary to Sec. 3. (Legislative Assembly Debates Vol. XII pp. 658 to 830 and Legislative Council Debates Vol VIII pp. 473-500)

[29] Amendment of Mr. Baktavatsalam Naidu in the Legislative Assembly. (Legislative Assembly Debates Vol. XII No. 8 p. 582).

[30] Some of the criticisms relating to specific provisions of this Act are indicated in the commentaries. Non-exclusion of bad debt (Legislative Council debate Vol. VIII p. 473-474).

HISTORY AND COMMENCEMENT OF THE ACT.

The Madras Sales Tax Bill was published in the *Fort St. George Gazette* dated 28—2—39, and the Bill was referred to a select committee on 1—4—39. The Select Committee went into the numerous representations made to them by various bodies and persons and also heard in person the representatives of the Madras Chamber of Commerce and the South Indian Chamber of Commerce. The Select Committee made certain changes in the bill and the bill as amended by the Select Committee was published in the *Fort St. George Gazette* dated 25—4—39. The Amended Bill was introduced in the Madras Legislative Assembly on 8th May and in the Madras Legislative Council on the 17th May and after having been passed by both the houses, the bill secured the assent of His Excellency The Governor of Madras on 4th June and Section 1 has come into operation immediately from 4—6—39 and the other sections come into operation from 1st October 1939,[31] the day notified by the Governor under S. 1(3) of the Act. The Act was published in the *Fort St. George Gazette* dated 13—6—39. The Turnover and Assessment rules and the other rules framed under the Act also come into operation from 1—10—39. (See Rule 2 Turnover and Assessment Rules, and General Sales Tax Rules).

LEGALITY OF THE TAX AND LEGAL DIFFICULTIES IN WORKING THE ACT.

(i) *Taxation of Purchaser.*

The present Act levies a tax on the basis of the turnover of a dealer. (S. 3) 'Turnover' in this Act represents the aggregate amount "for which goods are either bought or sold" (S. 2-i). The term 'dealer' is defined as a person who carries on the business of 'buying' or 'selling' goods and the term 'sale' has been defined as the transfer of the property in goods.

The preamble[32] shows that this Act is intended for the levy of a tax on the sale of goods in the province of Madras. But the definitions extracted above show that the purchaser also is included in the term 'dealer'. Complications are bound to arise with reference to the working of this Act in relation to exports and imports.

Before dealing with the difficulties inherent in the working of this Act with reference to internal trade, exports and imports, some of the objections to the validity of the Act can be disposed of. In the case of internal trade, both the *purchaser* and the *seller* are within the province of Madras. In the case of exports, the *buyer* is outside the province and the collection of tax from the purchaser may involve administrative inconvenience. But the Select Committee observe that "in certain trades dealing with articles of export, it may be more appropriate to levy the tax on the persons to whom sales are made (purchasers) than on the persons by whom sales are made"[33]. The provision for taxation of purchase seems to be intended to cover a case of purchase within the province for the purpose of sale outside the province[34]. The sale being outside the province, it is not taxable and unless the purchase within the province is taxed, the transaction would escape taxation. In the case of imports, the *buyer* is within the province of Madras, while the *seller* is outside the province. Firstly, the inclusion of the purchaser within the definition of the term 'dealer' has been subjected to some criticism. By this extended definition of the term 'dealer' the Legislature has granted power to collect the tax from the purchaser of goods. Item 48 of List II of Sch. VII read with S. 100(3) of the Government of India Act no doubt gives the Provincial Legislature power to legislate with reference to the sale of goods. But, it may be plausibly argued that a tax on 'purchase' is a specific item of taxation which has not been granted either to the Provinces or to Federation and that, unless this item of taxation is assigned to the Provinces under S. 104 of the Government of India Act by the Governor General, a tax on purchase is outside the purview of the Provincial Legislature. This argument is unsustainable; for, it assumes that sale and purchase are two independent transactions which they are not. Sale and purchase are but parts of one indivisible transaction. The same transaction, viewed from the point of view of the purchaser is purchase and viewed from the point of view of the seller, is sale. "The Legislature has been given the power to tax the transaction which *sale* connotes", and this power carries with it the power to tax either the seller or the purchaser. "Customarily the vendor rather than the vendee is liable for the tax although both may be held responsible for the proper payment of the tax[35].

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[31] See *Fort St. George Gazette* dated 29—8—1939 Part I, p. 1090.

[32] Permissibility of reference to preamble see commentary on 'preamble' to this Act.

(ii) *Sales Tax and Excise.*

Secondly, a general sales tax comprehends also a tax on the sale of goods produced or manufactured in India. Is such a tax *ultra vires* of the provincial Legislature? Does such a tax amount to a levy of "duty of excise on goods manufactured or produced in India"—a subject of taxation reserved exclusively for the Central or Federal Legislature[36].

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[33] Report of the Select Committee—Fort St. George Gazette p. 207. Part IV dated 25—4—1939.

[34] See Legislative Assembly Debates Vol. XII p. 571 and Legislative Council Debates Vol. VIII p. 458.

[35] Seligman and Johnson in Encyclopaedia of Social Sciences Vol. IV p. 517. Cited in *re* Motor Spirit Act case 49 L.W. 36 (F.C.) at p. 50. See Legislative Assembly Debates Vol. XII No. 8 pp. 572 to 574.

[36] Item 45, List I, Schedule VII Government of India Act.

So far as the Government of India Act is concerned, there is no distinction between a tax and a duty; for, the term taxation includes any tax or impost whether general or local or special[37]. So, in considering whether an enactment like the Madras General Sales Tax Act is a measure that is substantially a duty or tax reserved for the Federal Legislature, the pith and substance of the enactment[38] must be referred to. The question of the legality of a tax like the one levied by the present Act has been considered in a recent judgment of the Federal Court which upheld the validity of the Central Provinces Motor Spirit Taxation Act[39]. The general power of the Central or Federal Government to levy an excise duty[40] on *all stages* from manufacture to consumption, is subject to the exceptional power given to the provinces to levy a tax at the *stage of the sale goods*, and the Central Government has thus no power to levy a tax on the manufactured goods at the *stage of sale* in the provinces[41]. The present Act is thus *prima facie intra vires* of the Provincial Legislature. Thirdly, the taxation under the present enactment being cumulative, all sales including even the first sale by the manufacturer fall within the provisions of this Act. Is the Act so far as it comprehends the first sale by even a manufacturer *ultra vires*? No. The reason is this. This Act is "intended not to impose any special burden on goods manufactured in India. Its object is to recover revenue on *all* sales irrespective of the origin of the goods. The amount assessed depends on the sale price[42] and in pith and substance, it is a General Sales Tax and is thus *intra vires* of the Provincial Legislature[43].

(iii) *Sales Tax and Import and Export Duties.*

Import duties (customs) and **export duties** are subjects of taxation within the exclusive competence of the Central or Federal Legislature[44]. Under the Madras General Sales Tax

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[37] Sec. 311 Government of India Act.

[38] 1928 A.C. 328 at p. 337. See also 49 L.W. 36 (at 71 and 73): A.I.R. 1939 F.C. I. where substance of the Central Provinces Act and the object of the Act are considered.

[39] In *re* Motor Spirit Act. 49 L.W. 36: A.I.R. 1939 F.C. I.

[40] Item 45 List I in Schedule VII Government of India Act.

[41] In *re* Motor Spirit Act. 49 L.W. 36 (at pp. 98, 99, 100): A.I.R. 1939 F.C. I.

[42] 49 L.W. 36 F.C. at p. 71: A.I.R. 1939 F.C. I.

[43] Sulaiman J. holds that in extreme cases however, the imposition of a tax on the first sale of certain specified goods produced or manufactured in India may be so closely connected with production or manufacture as to become an excise duty though it only purports to be a tax on the first sale of such goods. In such cases, if the pith and substance of the Act shows that it is an excise tax on the first sale, the tax is *ultra vires*. For instance, if Bengal imposes a tax on the first sale of jute it would be an excise duty and not a sales tax. (44 L.W. 36 at p. 73).

[44] Sec. 140 and item 44 of List I in Schedule VII Government of India Act.

Act, sales of articles of import and export are also taxed. Looking at the pith and substance of the enactment and the fact that imposition of tax is on all goods generally, it is clear that the object of this Act is to recover revenue on *all* sales of *goods* irrespective of the origin of goods. The tax levied depends on the turnover which is determined by the sale price. So the tax levied is not an import or export duty. The Madras General Sales Tax Act being cumulative, even the first sale of articles imported is subject to taxation. It may be that a tax on the first sale of imported articles[45] approaches an import duty. But, regard being had to the comprehensive character of the tax, as applied to sales of all goods, the tax cannot be held to be an import duty.

APPLICATION OF THE ACT—PRINCIPLES.

The different classes of cases to which this Act can conceivably apply can be set out:—

(1) Internal trade (trade within the province) goods, seller and purchaser being within the province.

(2) Exports[46]—seller being in this province.
goods being in this province.

buyer in another province. (Interprovincial exports)[46]
buyer in a foreign country. (exports strictly so called)

(3) imports[46]—buyer in this province.

seller and goods in another province. (Interprovincial imports)[46]
seller and goods in a foreign country. (imports strictly so called)

In all the cases stated above if the buying or selling can be held to be within the province of Madras, this Act can apply. When is a *sale* or purchase said to be within the province of Madras? This question has to be answered with reference to two other questions. What is the law applicable to a transaction and when is the property in goods sold passes? The former question can be answered thus:—

Goods being movable property, the law relating to the sale of goods has to be determined with reference to the place where the contract of sale takes place (or *lex loci contractus*[47]) in the case of sale in India by the Sale of Goods Act, and in the case of a sale in foreign country by the law of that country.

The rules regarding the crucial question of the Transfer of Property in goods may be noticed here.

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[45] A tax on the first sale of certain articles only mainly imported is an import duty. Sulaiman J. 49 L.W. 36 at p. 73.

[46] For purposes of convenience the words are used in a loose sense. Strictly speaking export means 'send out to another country' and import means 'introduce from a foreign country.'

[47] (1905) 1 K.B. 677. *Embricos* v. *Anglo Austrian Bank*. See also A.I.R. 1933 Mad. 756. For difficulty in determining place of sale, see under heading "other mercantile contracts" p. xiv and pp. 16 to 19 *supra*.

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Firstly, in determining the terms of a contract as to the Transfer of the property in the goods sold (*lex contractus*) the intention of the parties has to be considered and this principle is embodied in the English and Indian Sale of Goods Act[48].

Secondly, if parties have not expressed their intention, the question of the transfer of property in goods has to be determined with reference to the law of the country where goods are at the time of sale[49] (*lex situs*) (in the case of goods in India by the Sale of Goods Act and in the case of a foreign country by the law of that country).

It must however, be mentioned here that the Sale of Goods Act in India has adopted the provisions of the English Sale of Goods Act. The latter is copied in many Colonial enactments. Further, the presumption in law is that the law of the foreign country is the same as English law. [1918 A.C. 157].

Let us apply the rules to the three classes of cases mentioned above.

UNCERTAINTY CAUSED BY THE ELEMENT OF INTENTION.

(i) *Internal Trade.*

Where purchaser, seller and goods are within this province, the application of the rules do not present much difficulty. Where rule 2 applies, the sale takes place within the Province of Madras and the law applicable to the Madras Province being the Sale of Goods Act, the provisions embodied therein as to the passing of property[50] in the goods sold apply and this Act covers such a sale. If the intention of parties is to govern (rule 1) and if the parties intend that the payment of consideration or the delivery of goods determines the passing of the property in goods and if the payment of consideration or the delivery of property is within the Province of Madras, this Act covers such a sale. If however, the payment of consideration or the delivery of goods which is intended to pass the property in the goods sold, is to be outside British India, e.g., Pudukotta or Pondichery, is such sale within the purview of this Act? The answer seems to be in the negative; for, legally the sale takes place outside the Madras Province[51].

(ii) *Exports*[46].

When goods are exported to another province[46], or to a foreign country, the sale is governed by the Sale of Goods Act[52], if parties have not expressed their intention (rule 2) for, the law applicable at the place where goods are at the time of sale is the Sale of Goods Act. The place where the sale takes place would be the place where the property in the goods sold passes[53], and if by applying this test, the sale takes place in another province or in a foreign country, such sale is outside the purview of this Act.

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[48] Ss. 19 and 62 of Sale of Goods Act. See also [1865] 6 B. and S. 100 at p. 133. Where Justice Willes observes that "the rights of the parties to a Contract are to be judged by that law which they intended, or rather by which they may justly be presumed to have bound themselves". See also [1889] 42 Ch.D. 321.

[49] (1860) 157 E.R. 1371 : 120 R.R. 799 *Cammell v Sewell.*

[50] See Commentaries to Sec. 2(h).

[51] The liability of the parties in the above illustration to sue or be sued in the courts in our Province are irrelevant; for, the jurisdiction of courts to entertain suits is governed by Ss. 19 and 20 (C.P.Code) residence of defendant and the accrual of cause of action.

[52] See commentary to Sec. 2(i) under the title. '*When and where property in the goods sold passes*' and Ss. 24, 25, 20, 21, 22, 64, etc., of the Sale of Goods Act.

If, in the case of exports, parties *intend* that sale is to be completed outside this province, e.g., by delivery being outside the province or by payment of consideration being made outside the province (rule 1) the sale is outside the purview of this Act and the sale is not to be included in the turnover.

If on the other hand, in the case of exports, where parties *intend* (rule 1) that sale is to be effected within the province, e.g., by delivery being made to an agent of the buyer within this province or by receipt of consideration being within this province, the sale is effected within this province and such sale is taxable under this Act.

iii. *Imports*[46].

In the case of *interprovincial imports* where parties have not expressed their intention (rule 2) the transfer of property in goods takes place at the place where the goods are at the time of sale, and the law applicable is that embodied in the Sale of Goods Act[53]. But in the case of *imports strictly so called*, the transfer of the property in goods may be effected according to the law of the foreign country, the law of the place where the goods are at the time of sale.

Taking a case where parties *intend* (rule 1) that sale is to be completed within the province, e.g., by delivery being made within the province or payment of consideration being made within the province, the sale is effected within this province and can be included in the determination of the turnover[54].

If however parties intend (rule 1) even in the case of imports that sale is to be effected outside the province, e.g., by delivery being made or consideration being paid outside the province in a place like Pudukotta (a native state) the sale is outside this Act and the price of the goods sold cannot be included in the determination of the turnover.

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[53] See commentaries to Sec. 2(h) See also under heading "C.I.F. contracts" and "other Mercantile contracts."

[54] Ss. 25 and 64 of Sale of Goods Act.

See commentary to Sec. 2(h).

[54] See 49 L.W. 38 at p. 73. Observations of Sulaiman J. Sale by even a retail manufacturer outside a province may be sale for the purpose of a tax on the sale of goods, when consumer within the province orders goods direct and when under the terms of the contract, the transaction of sale is completed within the province.

C.I.F. CONTRACTS

When the purchaser and seller are in different countries, the usual mode of effecting sales of goods is by the C.I.F. contract system (sale whose price includes insurance and freight). Mere shipment does not pass title in goods[55]. The vendor ordinarily retains his title till certain conditions are fulfilled[56].

Take the case of goods *exported* from our province. The exporter or seller may send the bill of lading in respect of the goods to a banker doing business in the place of the buyer with direction to hand over the bill of lading to the purchaser only on payment of price for the goods[57]. In this case the property passes only on actual payment and as the actual payment is outside the province, the place of sale is the foreign country, and the sale is outside the purview of this Act. Suppose however, the exporter (seller) endorses the bill of lading in favour of the purchaser when the goods are shipped. The endorsement is indicative of the relinquishment of title and the sale must be deemed to be effected in the Madras Province, as such endorsement is made within the province. Such sale is within the purview of this Act.

Similarly, in the case of *imports*, if the bill of lading is sent by the seller to a banker doing business in the place of the importer (within the Madras Province) with direction to hand over the bill of lading to the purchaser, payment of the price of goods to the banker passes title, and the sale must be held to be within this province. If however, the bill of lading is endorsed by the seller outside the province, in favour of the buyer (in the province) property in goods passes on shipment and on the endorsement being effected, and the sale must be deemed to take place outside this Province. Such sale is not taxable.

OTHER MERCANTILE CONTRACTS

The determination of the place of sale for the purpose of the Madras General Sales Tax Act has been considered with reference to C.I.F. contracts. The uncertainty in the application of this Act and the difficulties introduced by the element of "*the intention of parties*" in Mercantile contracts in determining the place of sale have also been considered. Let us now consider how far the rules embodied in the statute law of India introduce complication in the determination of the *place of sale* when the buyer and the seller are in different places.

Generally, the place of acceptance of an offer is the place of sale. Even as an offer or proposal[63] may be to *purchase* goods or to *sell* goods, acceptance may be of an offer to *purchase* goods or to *sell* goods. Secondly, acceptance may be by correspondence and

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[55] A.I.R. 1928 Bom. 170.

[56] Sec. 25 Sale of Goods Act.

[57] A.I.R. 1924 Bom. 325.
A.I.R. 1927 Lah. 391.
A.I.R. 1931 Lah. 260.

[63] Sec. 2(b) Contract Act.

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in fact mercantile contracts are mostly concluded by correspondence. The place where the letter of acceptance is posted is the place of sale[64]. Thirdly, in cases of goods sent on "sale or return system"[65] or in cases where conditions are attached for completion of sale[66], the place where approval is signified in the former case or the place where conditions attached are performed[66] in the latter case, is the place of sale.

Applying these rules, if an offer to purchase goods or to sell goods is made by a person in the Madras Province, but the place of acceptance or the place wherefrom the letter of acceptance is posted is in another Province, the sale is outside the Act the place of sale being outside the Province[67]. But, if the person who offers to sell or to purchase goods is in another Province, and if the acceptor being within the Madras Province, accepts by correspondence or otherwise from within this Province, the sale is within the purview of this Act, and the sale is taxable.

Similarly, in the case of goods received within this Province on "sale or return system", if the posting of the letter of approvál or if approval in any other form is from within this Province, the sale is taxable. If however, goods on 'sale or return' system are sent outside this Province, and the acceptance whether by correspondence or otherwise takes place outside this Province, the sale is outside the Province and is not taxable.

Again, in the case of goods sent out of this Province, if a condition is attached to acceptance and if the condition is performed outside this Province, the sale is not taxable. If however, goods are received into this Province and the conditions attaching to acceptance are performed within this Province the sale is within this Province and is taxable[68].

It is to be hoped that the legislature would take the earliest opportunity to define what, for the purpose of this Act would be the place of sale and thereby prevent evasion of the provisions of the Act.

INTERPRETATION

Legality of the Act. As Courts can find whether an Act is *ultra vires* or not[1], the provisions of the Act must be examined in their pith and substance to find whether the Act is *ultra vires* of the powers of the Legislature or not[2].

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[64] Sec. 4 Contract Act.
32 Cal. 886 at pp. 889 and 890.
"The place of contract is where the proposal is received and the assenting letter is despatched." Savigney's conflict of Laws p. 214.

See also Ss. 21 and 22. Sale of Goods Act.

[65] Sec. 24 Sale of Goods Act.

[66] 32 Cal. 884 (See also cases under S. 20 C.P.C.)

[67] See the following cases.
27 Mad. 355.
A.I.R. 1931 Cal. 659.
A.I.R. 1933 Mad. 764.

[68] 32 Cal. 884—Payment of money as condition.

For detailed discussion see Commentaries to Sec. 2(h).

[1] A.I.R. 1932 Cal. 753.

[2] See introduction 'Legality of Act' and observation of Sulaiman J. in 49 L.W. 36.

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Interpretation of the provisions:—The provisions of this enactment broadly fall into five divisions.

(1) The taxation provisions (Section 3).
(2) The licensing provisions (Sections 5, 6, 8).
(3) The penal provisions (Sections 15 & 16).
(4) The provisions embodied in the rules.
(5) The provisions restricting the right of action in the civil court and protecting the acts of public servant (Sections 17 & 18).

Taxation provisions. An enactment imposing a pecuniary burden[3] must be construed strictly[4] without straining the language of the Act for the purpose of holding a person liable to tax[5] for, the principle of law is that a subject is not liable to be taxed unless he comes within the letter of the law and unless there is a definite statute strictly interpreted[6], or in other words unless the crown brings the subject within the letter of the statute[7]. When there is an ambiguity or doubt, construction must be in favour of and beneficial to the subject[8] and against the crown[9]. Thirdly, the principle is also well established that when a question of forfeiture of rights is involved, preference should be given to a construction favourable to the subject[10]. Fourthly, short of bringing himself within the penal provisions of law, like submitting a false return, etc., a subject can adopt all means not forbidden by law to escape taxation[11]. Fifthly, there can be no equitable construction of a fiscal enactment[12] and the words in the Act must receive a natural and ordinary construction[13]. Sixthly, unless specifically exempted, even the Crown is bound by a fiscal enactment[14] though in respect of ordinary Acts the Crown is not subject unless named expressly or by implication[15]. Seventhly, in construing a fiscal statute neither the intention of the Legislature[16] nor the principle involved in the Legislation[17] is relevant. Eighthly, even technicalities have to be strained in favour of the subject[18].

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[3] A.I.R. 1937 Nag. 11.

[4] See Maxwell's Interpretation of Statutes pp. 200 and 463 (4th Edition.)
A.I.R. 1932 Mad. 474.

[5] A.I.R. 1931 Bom. 333.
A.I.R. 1935 Bom. 423.

[6] A.I.R. 1931 Mad. 683.

[7] A.I.R. 1929 Lah. 609 and A.I.R. 1930 Cal. 641 (F.B.)

[8] A.I.R. 1937 Mad. 604.
A.I.R. 1930 Mad. 626.
A.I.R. 1928 Mad. 569: 51 Mad. 301.
A.I.R. 1933 Rang. 68.
A.I.R. 1936 Cal. 814.

[9] A.I.R. 1935 Pat. 396 (F.B.)

[10] A.I.R. 1937 Pat. 550 (F.B.)
A.I.R. 1929 Mad. 60: 52 Mad. 164.

[11] A.I.R. 1930 Pat. 33 (F.B.)
A.I.R. 1928 All. 81 (F.B.)
A.I.R. 1928 Mad. 543.
A.I.R. 1929 All. 919.

[12] A.I.R. 1931 Lah. 572: 13 Lah. 53;
A.I.R. 1929 Lah. 609.
A.I.R. 1936 Cal. 874.
See also 32 C.L.J. 421.

[13] A.I.R. 1927 Cal. 432 (F.B.)

[14] Per Beaumont C.J. A.I.R. 1935 Bom. 347. Case under Bom. Municipal Act.

[15] Per Beaumont C.J. in A.I.R. 1934 Bom. 379.

[16] A.I.R. 1934 Pat. 178: 13 Pat. 336.

[17] A.I.R. 1931 Oudh 366: 6 Luck. 684.

[18] A.I.R. 1937 Oudh 416.

38. **Licensing provisions**[19]. Courts will decline to interfere with the discretion vested with the Government. But, where the act of the Government is *ultra vires* or where the power relating to licensing has a mandatory force[20], Courts may interfere[20].

39. **Construction of penal provisions.** The provisions in Section 15 and in some of the rules being penal in nature, they must be construed in a strict[21] and narrow sense[22]. Firstly, courts must see that the thing charged as an offence is within the plain meaning of the words used[23]. The court must not hold that a penalty has been incurred unless the clause imposing it is so clear that the case falls within it[24] for, it is not the function of the court to extend the scope of an enactment because the Legislature has not used sufficiently comprehensive words[25]. Secondly, if two constructions are possible one imposing a penalty and the other not imposing a penalty the latter construction is to be preferred[26] for, the construction which is favourable to the subject must be preferred[27]. The benefit of doubt must in such cases be exercised in favour of the subject[28]. and against the Legislature which has failed to explain itself[29]. Thirdly, penal statutes should be construed so as to protect the liberties of the subject[30]. Fourthly, a construction which would mitigate a penalty should be preferred to another construction which would aggravate the penalty[31]. Fifthly, the person charged has a right to say that the thing charged is not within the spirit of the enactment though it is within the letter of the words used[32]. Sixthly, courts must avoid a construction which is patently oppressive and prefer one that protects a person from fresh prosecution for the same offence[33]. Seventhly, penal statutes are presumed to enact prospectively and not retrospectively[34].

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[19] Ss. 5 to 8 of the Act and General Sales Tax Rules.

[20] Sec. 8.
See Commentaries to Ss. 17 and 18.
A.I.R. 1931 Mad. 497.
A.I.R. 1933 Mad. 148.
1932 M.W.N. 873.

[21] A.I.R. 1931 All. 421.
See also A.I.R. 1925 Mad. 239 (Case under Penal Code).
A.I.R. 1929 Lah. 163 (Case under Penal Code).
A.I.R. 1931 Nag. 177.
A.I.R. 1927 All. 599 (Court of Wards Act).
See Maxwell's Interpretation of statutes p. 425 (4th Edition).

[22] A.I.R. 1926 Nag. 137.

[23] (1872) L.R. 4 P.C. 184.
A.I.R. 1926 Bom. 57.

[24] A.I.R. 1934 Sind 46.

[25] A.I.R. 1927 Lah. 276.

[26] A.I.R. 1934 Sind 46.

[27] A.I.R. 1929 Lah. 641.
A.I.R. 1930 M.W.N. 249 (F.B.) (Case relating to criminal procedure).
A.I.R. 1930 All. 265 (F.B.)

[28] A.I.R. 1928 Sind 1 (F.B.)
A.I.R. 1932 Nag. 174.
A.I.R. 1920 All. 210.

[29] A.I.R. 1936 Nag. 55

[30] A.I.R. 1934 Lah. 264 (Construction of Press Emergency Powers Act.)
A.I.R. 1931 Lah. 476 (decision under Cr.P.C.)

[31] A.I.R. 1926 Sind 273.

[32] A.I.R. 1926 Cal. 927:
See also [1872] L.R. 4 P.C. 184.

[33] A.I.R. 1935 Mad. 56(2); 58 Mad. 513.

[34] A.I.R. 1931 Lah. 145.

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40. **Rules and Rule-making provisions.** Firstly, rules framed under an Act are not law unless the statute specifically states so[35]. Rules under this Act must be construed as if they are part of this Act[36]. Secondly, the rules framed under an Act should be consistent with the Act[37] and must be reasonable[38]. If the rules are in contravention of or inconsistent with or repugnant to[38] or otherwise in excess of the provisions of the Act, the rules would be *ultra vires* of the statute[39]. Rules enforceable by penalties must be construed like other provisions encroaching on the ordinary rights of persons[38] in a strict manner.

41. **Provisions restricting the right of action in the Civil Court. (Ss. 17 and 18.)** The provisions in Section 17 restricting the right of action in the Civil Court must be strictly construed. The principle of law is this—" when a citizen seeks a civil remedy against a public servant, the Legislature must be presumed to have been very cautious in depriving the aggrieved citizen of redress in a court of law and any restriction of such remedy should not be lightly extended so as to unduly restrict the remedy of the citizen "[40]. (See notes to Sections 17 and 18.) Provisions ousting the jurisdiction of civil courts should be strictly construed,[41] a construction retaining the jurisdiction of civil courts being preferred to the one barring resort to the civil courts, when alternative constructions are possible[42]. The jurisdiction of ordinary tribunals cannot be barred in the absence of clearest language[43] and the words of an enactment ought not to be strained so as to oust the jurisdiction of the ordinary courts of the land[44].

INTERPRETATION OF SOME OF THE WORDS USED IN THE ACT AND THE RULES.

May. The word 'may' is used in Sections 2 (i), 3 (3), 5 to 8, 10, 11, 14 and 16 and in the rules as well. The word 'may' *prima facie* indicates a discretionary power of an enabling character and it is in this sense that the word is used in most of the sections in this Act. But in Section 8 the word seems to have a mandatory character. If an agent fulfils the requirements of S. 8, can the Provincial Government refuse to grant him a licence?

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[35] A.I.R. 1923 Pat. 1 (S.B.).
See Sec. 19(5) of this Act declaring rules to be law.
35 M.L.J. 736.

[36] See Maxwell's Interpretation of statutes p. 76 (3rd Edition)
35 M.L.J. 736.

[37] A.I.R. 1934 Sind 110.
A.I.R. 1931 Lah. 476.
A.I.R. 1934 Cal. 537.

[38] See Maxwell's Interpretation of statutes p. 481. (4th Edition).

[39] A.I.R. 1934 Cal. 537.
See 1932 M.W.N. 873 Bye-law held *ultra vires*.

[40] A.I.R. 1939 F.C. 43 at p. 57.

[41] A.I.R. 1931 Nag. 48.
A.I.R. 1921 Bom. 471.
A.I.R. 1928 Pat. 615.

[42] A.I.R. 1931 Mad. 801.
A.I.R. 1935 Oudh 96.
A.I.R. 1928 Lah. 121 (F.B.)

[43] A.I.R. 1931 All. 706.

[44] A.I.R. 1930 Sind 265 (F.B.)

No. The power to license is vested in the Provincial Government not for the benefit of the Government but for the benefit of agents. The use of the word 'may' in Section 8 seems to indicate something of a statutory duty[45] for, power is vested in the Government for public good.

Shall. The word 'shall' has been used in Sections 1(3), 2(b), 2(h), 2(i), 3, 9, 11, 13, 14, 17 and 18 and the word is used in the rules as well. The word connotes something of a mandatory character.

Restrictions and conditions. These words occur in Section 2(i) explanation and Ss. 5 to 7. A condition is a *stipulation* upon whose fulfilment depends the application of exemption. Restrictions are *limits* imposed on the exemption to be claimed under this statute.

Subject to. The words 'subject to' are used in Section 2(i) explanation, Section 3, Sections 5 and 6. The effect of the use of the words is, that the provisions of the sections in which these words occur, apply only to the extent they do not conflict with the other provisions to which the sections are subject to. Thus, Section 3 is subject to Sections 4 to 8 even as the provisions of Sections 5 and 6 prevail to the extent they do not conflict with the "restrictions and conditions" to be prescribed.

Construction of Exemptions—Explanations and Provisos.

Exceptions. There are clauses in the nature of exceptions tacked on to Sections 12 and 13. Exceptions do not affect the general rule and they should be strictly construed[46].

Explanations. Explanations have been inserted in this enactment in Sections 2(b), 2(h), and 2(i). Explanations inserted in a section only explain the section and point out the real scope of the sections.

Provisos. Provisos are used in Sections 2(i), 3(1), 3(2), 8, 9, 11 and 13. A proviso is a limit on the principal section to which it is tacked on, and it must receive a strict construction[47]. It is not legitimate to hold that, by mere implication a proviso withdraws anything which the main provision has given[48]. The effect of a proviso is to take something out of the scope of the section[49] as in the case of Section 13. But a proviso cannot extend the operative part of the section unless there is real ambiguity in the substantive section itself[50].

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[45] [1880] 5 A.C. 214.
47 Bom. 742 P.C. 'May' in Sec. 51 Income Tax Act of 1918 construed.

44 L.W. 901 at pp. 911 and 912. Decision under Section 23 Court of Wards Act. Use of 'may' held to indicate statutory duty. See also A.I.R. 1931 Pat. 1.
A.I.R. 1930 Rang. 297.
See also Maxwell's Interpretation of Statutes p. 361. (3rd Edition).

[46] A.I.R. 1929 Oudh 389 (F.B.)

Some aids in the Construction of the Statute.

Use of the preamble. 1. When the language and object of an enactment are not open to doubt, the preamble cannot be referred to for restricting or extending the enacting part of it.

2. Where however there is ambiguity in the enactment, the preamble may be referred to for clearing up, or explaining, or elucidating the text of the enactment or for fixing or keeping the effect of the Act within its real scope[51]. (See also commentaries to preamble of this Act.)

Use of short title, and long title. See commentaries to full title and short title of this Act pp. 1 and 2.

Use of marginal notes. Where the section itself is clear,—reference to the marginal note is not permissible[52]. But, when the language of the statute is not clear, the marginal note is useful to find out the drift[53]. Thus, in construing section 18 where there is an ambiguity as to the scope of the first clause, the marginal note can be pressed into service.

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[47] A.I.R. 1932 Mad. 46.
A.I.R. 1933 Oudh 491.

[48] A.I.R. 1930 Mad. 124.

[49] A.I.R. 1927 Nag. 68.

[50] A.I.R. 1926 Cal. 927.

[51] Preamble used to limit application of the Act in relation to exports and imports. See Introduction "Legal difficulties in working the Act".
See the following representative cases.
A.I.R. 1936 Cal. 593.
A.I.R. 1934 Cal. 741 : 62 Cal. 125.
(I.L.R.) 1938 Mad. 841 : A.I.R. 1938 Mad. 441 : 47 L.W. 498.
(I.L.R.) 54 Mad. 845 : 61 M.L.J. 535 : A.I.R. 1931 Mad. 629.
(I.L.R.) 14 Lah. 203 : A.I R. 1931 Lah. 706.
(I.L.R.) 55 All. 24 : A.I.R. 1932 All. 617.

[52] A.I.R. 1927 Mad. 156.
(A.I.R. 1924 Mad. 389 diss.)
See also 42 Mad. 451.

[53] A.I.R. 1924 Mad. 389.
A.I.R. 1932 Nag. 174.
A.I.R. 1925 All. 503 (F.B.)
A.I.R. 1935 Bom. 347.
A.I.R. 1938 Bom. 284.
A.I.R. 1935 Oudh 337.

SCHEME OF THE ACT AND RULES

This Act is designed to impose a general tax on the sale of goods[54]. Broadly speaking, the Act and the rules are divisible into three convenient divisions, provisions relating to assessment of tax, provisions relating to licences, and provisions relating to procedure, machinery and the remedies available under this Act.

Assessment. The tax is on the sale of goods[55] the amount of tax being determined with reference to 'turnover'[56] or the aggregate sum for which goods are bought or sold in the Madras Province. The principle of tax being cumulative, every time there is a transfer there is taxation and the same goods are taxed every time they pass from one person to another at a rate as fixed in the Act.

The tax is levied at the slab rate of Rs. 5/- per month on turnover of Rs. 10,000/, but not exceeding Rs. 20,000/- while in cases of turnovers of over Rs. 20,000/, the tax is levied at the rate of Re. 0-8-0 for every Rs. 100/- of turnover[57].

Assessing Authorities. The Assistant Commercial Tax officers in the case of certain dealers and Deputy Commercial Tax officers in other cases are the assessing authorities under the Act[58]. (See Summary of Rules and Notifications.)

Persons taxable. The tax is levied on all persons who carry on the business of buying or selling goods[59] and the term 'person' has to be interpreted in a wide sense. Thus, individuals, joint families, co-operative societies, firms and companies doing the business of buying or selling goods are within the purview of this measure[60]. Similarly, agents doing business within the province are liable, though principals are resident outside the province[61]. Likewise special classes of 'persons' or 'business' are also taxed[62].

Calculation of turnover. The calculation of turnover is not a simple matter. The present Act provides that both the buyer and the seller are not to be taxed in respect of the same transaction, but only one of them. Generally, the seller is taxed though in the case of certain articles of export, the buyer is taxed[63]. Similarly, when the price of goods is included in the turnover of a purchaser, he is not liable to be taxed when he sells the same goods[63]. Further, the rules of inclusion of certain sums and the exclusion of certain sums and the value of goods have to be considered[64]. The basis of taxation being the net turnover, it has to be determined by applying the various rules of exclusion[65]. Lastly the rules relating to exemptions and modifications have to be applied[66]. *Exemptions and modifications* have been provided by this Act. Besides, from the very nature of the Act, certain transactions are outside its purview. The Act deals only with a tax on the Sale of *Goods* or movable property. So a transfer of immovable property or a sale services or labour is outside this Act. Again, certain goods like actionable claims, stocks and shares and securities are outside this Act[67]. Further, exemption is provided in respect of three classes of goods. Firstly, sale of certain classes of goods, i.e., electric energy, motor spirit, manufactured tobacco and goods taxed under the Madras Abkari Act or the Opium Act falling within Section 4, secondly, proceeds of sale of agricultural and horticultural produce within the meaning of Section 2(i), and thirdly, bullion and specie, cotton, cotton yarn and cloth woven on handlooms falling within Section 5 are exempt from tax[68].

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[54] See preamble.

[55] Sec. 2(h).

[56] Sec. 2(i).

[57] Sec. 3.

[58] See Notification issued under the Act.

[59] Sec. 2(b) and Sec. 3.

[60] Sec. 2(b) see commentary to Sec. 2(b) under title 'person'.

[61] Sec. 2(b) explanation 2.

[62] Sec. 19(c) to (e) and Rr. 19 to 23 General Sales Tax Rules.

[63] Sec. 3(1) proviso (2) and Rule 4 "Turnover and Assessment Rules."

[64] Sec. 2(i) explanation.

Since the Act taxes only 'sales', agreement to sell, mortgage, hypothecation, charge and pledge are outside the scope of the Act. But the Act specifically brings within its purview transfer on the hire-purchase system or sale on the instalment system[69].

This Act applies only to sales within the Madras Province and when sales are effected outside the province, this Act does not apply to such sales[70].

Similarly, net turnovers of less than Rs. 10,000/- are not taxable as the Act exempts such turnovers[71].

Again certain agents are exempt from tax if they are licensed and if the principals for whom the agents do business are subject to the jurisdiction of this Act[72].

In the case of certain goods, a modification of the tax in the shape of reduction of tax or to put it more correctly, a rebate has been granted. Thus certain finished articles of industrial manufacture notified by the Government intended for export falling within Section 7 are entitled to rebate of one-half of the tax if the goods are delivered outside the province[73]. Similarly certain goods, i.e., hides and skins are taxed only at one point and the rigour of the cumulative tax is modified[74]. [See Summary of Turnover and Assessment Rules.]

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[65] Rule 5 Turnover and Assessment Rules.

[66] Ss. 4 to 8 and Rule 5 Turnover and Assessment Rules.

[67] Sec. 2(c).

[68] Ss. 4 and 5 and 2(i).

[69] Sec. 2(h) and explanation.

[70] See commentaries to Sec. 2(h) and introduction entitled "legal difficulties in working the Act."

[71] Sec. 3 proviso (1) and R. 5 (3) Turnover Assessment Rules.

[72] Sec. 8.

[73] Sec. 7 and notification issued under the Act and Rr. 9 and 10 General Sales Tax Rules.

[74] Sec. 6 and Rr. 4 (2), 5 (g), 15 and 16 Turnover and Assessment Rules.

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Licences under the Act. Certain persons are licensed under this Act, i.e., agents[75] when they transact business on behalf of principals. Similarly persons who deal in sales of goods like bullion, specie, cotton, etc., may be licensed[76] and the articles concerned in the above two classes are totally exempt from taxation. Hides and skins are taxed at one point only if licences are to be obtained for sales of hides and skins[77].

The Assistant Commercial Tax officers in certain cases and the Deputy Commercial Tax officers in other cases are the licencing authorities[78].

Procedure, Machinery and Remedies. To start with there are provisions intended to secure that *proper materials are available* before assessing and licensing authorities. Dealers and licensees under Section 8 have to maintain accounts showing the value of 'goods bought and sold' and disclosing full details and if the accounts are not intelligible in this respect, accounts have to be maintained in a prescribed form[79]. Dealers and licensees in some cases have to furnish returns of their income[80]. Even if a person taxable under this Act has escaped taxation in a particular year provision is made for assessing turnover which has escaped assessment[81].

Similarly certain officers of the Police Revenue and Commercial Tax Department if authorised, have the right of inspection, and entry into the shop and offices of the dealer and have the right to secure production of documents[82]. Rules framed provide for "compelling the submission of returns, the production of documents, and enforcing the attendance of witnesses"[83], and their examination on oath. Similarly provision is made to keep the evidence oral and documentary produced before the authorities in the Act confidential[84]. Penal provisions and provisions relating to composition have been framed with a view to ensure the availability of materials for proper assessment, and to ensure the speedy realisation of tax[85].

Again, provisions designed to ensure the *proper functioning of officers* under this Act are framed. To prevent gross and total abuse of powers by officers and at the same time to give some latitude to officers, the bar of jurisdiction of ordinary courts is limited. The provisions relating to the bar of jurisdiction have been carefully framed. For acts done or purporting to be done under this Act, sanction is a condition precedent to the initiation of proceedings, and a period of limitation of six months is prescribed, while the liability of an officer or servant can arise only if he had not acted in good faith[86]. Similarly, revisional power is vested in the Board of Revenue and in the Commercial Tax officers to superintend the acts of the authorities constituted under this Act[87].

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[75] Sec. 8 and R. 5 General Sales Tax Rules.

[76] Sec. 5 and R. 5 General Sales Tax Rules.

[77] Sec. 6 and Rr. 4(2), 5(g), 15 & 16 Turnover and Assessment Rules and R. 5 General Sales Tax Rules.

[78] R. 5 General Sales Tax Rules.

[79] Sec. 13 and Rr. 11 and 12 General Sales Tax Rules.

[80] Sec. 9 Rr. 6, 11, 13, 15 Turnover and Assessment Rules R. 6 (9) and (10) General Sales Tax Rules.

[81] Sec. 19(f) and R. 17 General Sales Tax Rules.

[82] Sec. 14 and Notification issued by the Government.

[83] Sec. 19(h) and Rr. 24 to 27 General Sales Tax Rules.

[84] Sec. 19(i) and R. 30 General Sales Tax Rules.

[85] Ss. 15 & 16 and Rr. 29 and 32 General Sales Tax Rules.

Procedure in assessment. Normally assessment is on the basis of return of turnover. But if the return is incorrect or incomplete or if no return is furnished, provision is made to assess according to the judgment of the assessing authority.[88].

Payment and recovery. Procedure in payment of tax or procedure in recovery of tax if tax is not paid is indicated in Section 10. The tax may be recovered as if it were an arrear of land revenue[89].

Appeal and revision. To prevent miscarriage of justice, and to prevent arbitrary assessment on the part of officers, the Commercial Tax officer of every District is constituted as the appellate and revisional authority. But the final revisional authority is the Board of Revenue[90].

RULE AGAINST DOUBLE TAXATION

In considering how far this Act embodies the principle of avoiding double taxation, the question has to be considered from two aspects, i.e., (1) persons (2) goods.

In the former category falls the rule embodied in Section 3 (1) *proviso* (2) that the same person shall not be taxed twice, both as a purchasing dealer and as a selling dealer when he purchases and sells the same goods. Similarly, when an agent sells goods on behalf of the principal, the former is exempt, if the latter is subject to this measure of taxation[91].

Under the latter category fall the provisions embodied Section 4, Section 2 (i), and Section 3. An accommodating dealer is exempt from tax; for, he merely accommodates a customer and though there may be nominally two transactions, substantially there is only one transaction and the goods are taxed only once[92]. Again, exemption is granted in respect of articles refunded, for, the articles may be sold again and they may be subject to tax[93]. Further, in respect of a transaction of sale, the goods are to be taxed only once and both the purchaser and the seller ought not to be taxed but only one of them[94]. Similarly, certain goods which are subject to taxation under other enactments are exempt from taxation under this Act[95].

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86. Ss. 17 and 18.
87. Sec. 12 and R. 14(2) General Sales Tax Rules.
88. Sec. 9. See also Turnover and Assessment Rules.
89. Sec. 10.
90. Ss. 11 and 12 and Rr. 13 to 16 General Sales Tax Rules.
91. Sec. 8.
92. Sec. 2(i) explanation (iii).
93. Sec. 2(i) explanation (ii).
94. Sec. 3(1) *proviso* 2.
95. Sec. 4.

THE
MADRAS
GENERAL SALES TAX ACT

(ACT IX OF 1939.)

An Act to provide for the levy of a general tax on the sale of goods in the Province of Madras.

NOTES

FULL TITLE

It is legitimate to use the full title of the Act to throw light on the scope of the enactment[1]. The full title of this Act shows that the enactment provides for a general taxation on sales of goods within the Madras Province. There are other enactments which provide for the levy of taxes on sales of particular commodities or goods, such as the Madras Abkari Act, 1886, the Madras Electricity Duty Act, 1939, the Madras Sales of Motor Spirit Act, and the Madras Tobacco Act. Originally the title of the enactment was the 'Madras Sales Tax Bill'. In view of the general application of the tax, the Select Committee altered the title as "Madras General Sales Tax Bill."

Preamble: Whereas it is expedient to provide for the levy of a general tax on the sale of goods in the Province of Madras; It is hereby enacted as follows:—

NOTES

The preamble is the key to the understanding of an enactment. It is the preamble[2] and the enacting part of the Act that reveal the dominating object of the Legislature in enacting the legislation[3].

The following stand out predominantly on a consideration of the preamble in this enactment. Firstly the enactment provides for a levy of a **general** tax on goods, not a tax on specific goods only. In this respect the Act differs from other enactments, such as the Madras Abkari Act, the Madras Electricity Duty Act, the Madras Sales of Motor Spirit Taxation Act, and the Madras Tobacco Act which provide for the levy of tax on **certain** classes of goods only. The present Act levies a general sales tax as opposed to a selective sales tax. Secondly, the tax levied by this enactment relates only to **sales**[4]. A mortgage, hypothecation, charge, pledge or gift is outside the purview of this enactment. Thirdly it is not that all sales are affected by this enactment. This enactment taxes only sales of **goods**[5] or movable property. Sales of immovable property are thus outside the purview of the enactment. Fourthly, the enactment affects sales of goods only **within the province of Madras.** Sales of commodities in a native state adjoining the province of Madras, e.g., Cochin, or in British India outside the province of Madras are not affected by this statute. If a merchant from Madras goes to a place like Cochin or Puducotta and purchases articles, the sale is effected outside British India and the transaction is not taxed under this Act.

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[1] A.I.R. 1936 Cal. 593.

[2] A.I.R. 1931 Cal. 741.

[3] A.I.R. 1932 Oudh 152 (F.B.)
A.I.R. 1936 All. 507 (F.B.)

[4] See Sec. 2(h) definition of sale.

1. Short title, extent and commencement.

(1) This Act may be called the Madras General Sales Tax Act, 1939.

(2) It extends to the whole of the Province of Madras.

(3) This section shall come into force at once, and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Fort St. George Gazette*, appoint.

NOTES

Short Title. The short title of an enactment is chosen merely for convenience, its object being "identification and not description". Therefore while the full title of the Act can be used to "throw light upon its scope and progress," it is "not legitimate to give any weight in this respect to the short title".[1]

Extent. The Act applies to the Madras Province. [See notes under "province" Cl. (g).]

Commencement. Section 1 comes into operation from 4—6—39 the date of assent of the Governor to this Act. But the other sections of the Act come into operation only on a date to be fixed by a notification in the Official Gazette of the Madras Province, i.e., the Fort St. George Gazette[2]. The other sections come into operation from 1—10—39.

The rules to be framed relating to the determination of turnover[3] come into operation only on approval of the same by a resolution of the Legislative Assembly[4].

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[5] See Sec. 2(c) definition of 'goods'.

[1] A.I.R. 1936 Cal. 593

[2] See definition of 'notification' Sec. 2(f)

[3] See Sec. 3(2)

[4] See Sec. 3(2) proviso.

The other rules framed under Section 19 come into operation only after the draft rules are published in the Fort St. George Gazette for a period of four weeks[5].

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context.

NOTES

Unless there is anything repugnant in the subject or context. It is not possible to define words so accurately as to fit in all conceivable classes of cases. A word used in this Act which is defined in this section has the meaning as defined in this section, unless the word is used in a subject or context in which this definition will not fit. The interpretation clause does not define the meaning of words under all circumstances[1].

(*a*) "assessing authority" means any person authorized by the Provincial Government to make any assessment under this Act;

NOTES

ASSESSING AUTHORITY

Legislative Changes. The definition of assessing authority did not find a place in the original bill. It was originally proposed to utilise the services of the Revenue Department (i.e., Tahsildars, Revenue Divisional Officers, and District Collectors) for the purpose of carrying out the provisions of the Act. But the provisions in this respect were subjected to criticism both in the press and in the platform. Perhaps the intention of the Government is to requisition the services of trained officers capable of scrutinising the accounts of assessees, and thus efficiently carry out the provisions of the Act[2].

Comments. A person authorized to make an assessment is the 'assessing authority' under this Act. In its grammatical sense, the term 'assess' means 'fix or determine the amount of tax'[3] Thus a person authorized by the Provincial Government to fix the amount of tax is the 'assessing authority'[4].

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[5] See Sec. 19(4)

[1] A.I.R. 1933 Sind 258.

[2] In the Legislative Assembly an amendment was moved to add the words "not below the rank of a Sub-Divisional Officer" to the definition on the ground that the highest officers must be appointed for such purposes so as to avoid petty harassment and misuse of powers. The Prime Minister however opposed this amendment and it was rejected (Legislative Debates Vol. XII part 8 p. 568.)

[3] A.I.R. 1934 All. 930. Assessment defined. Decision under Income Tax Act.

[4] Duties of assessing authority—See rules under S. 19.

(b) "dealer" means any person who carries on the business of buying or selling goods;

Explanation (1) A co-operative society, a club, a firm, or any association which sells goods to its members is a dealer within the meaning of this clause.

Explanation (2) The Agent of a person resident outside the Province who carries on the business of buying or selling goods in the Province shall be deemed to be the dealer in respect of such business for the purposes of this Act.

NOTES

DEALER

Legislative Changes. In the definition of the term "dealer" as framed in the original bill, two important changes were made by the Select Committee. Firstly, not only the person selling goods but even the person buying goods falls within the definition. Secondly, the Select Committee included the agent residing in the Madras Presidency of a non-resident foreigner also within the category of a dealer for the purpose of the Act.

Comments. This is one of the important sub-sections of the Act. The definition of the term gives rise to four lines of classification. Firstly, the term 'dealer' applies

(1) to an individual or a person in the grammatical sense of the term and (2) to a group which is a person in an extended sense of the term[1].

An **individual** or a **group** is a dealer when he

(i) carries on business

(ii) and the business is one

  (a) of buying goods or

  (b) of selling goods.

Some of the classes of cases in which a **group** can be a dealer are indicated in Explanation I. They are (i) a co-operative society, (ii) a club, (iii) a firm, or (iv) an association selling goods to its members. Companies can also be dealers under this Act[2] as Explanation I is not exhaustive.

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[1] Sec. 3 (22) General Clauses Act.

[2] See commentary on term 'person' *infra*.

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Another line of classification arises with reference to the **person** who does the business of buying or selling goods. A person (using the term in an extended sense)[1] may do business either by **himself** doing business in the Madras Province, or **by his agent** doing business in the Madras Province [3]. In the latter case the agent is also a dealer for the purpose of this Act.

A third line of classification arises with reference to the **place** where the business takes place and the **character** of the business. The test to be applied in each case is, whether the "sale of goods" takes place within the Madras Province. A person (using the term in an extended sense) [1] may do the business of

(i) buying or selling within the Madras Province:—**(internal trade)**—the person buying and the person selling are dealers, the selling and buying being within the Province.

(ii) buying outside the Madras Province or selling outside the Province:—**(external trade)**—the sale or purchase being outside the Province, this Act does not apply.

(iii) buying goods from outside the Madras Province and getting them into this Province[4] **(imports)**. Buying can be viewed as sale to the importer. But the importer is not a dealer for the purpose of this Act if the buying is outside the Province[5]. But if the buying can be viewed as sale to him (importer) within the province, then he is a dealer as, for instance, in a case where the property in goods imported passes only within the province of Madras. If the importer sells the goods within the province, of course he is a dealer.

(iv) selling from within the Province **(exports)**[4]. If the sale of goods is within the Province the sale is taxable and the parties to the sale are dealers. If the sale is outside the Province, the act of export cannot be taxed and the exporter is not a dealer. In each case the question that must be answered is:-where does the sale of goods take place? If it is within the Madras Province, the person dealing in goods is a dealer.[5] In the case of certain articles of export, goods are purchased within this province and shipped abroad for sale outside the province. The extended definition of the term 'dealer' makes taxation of purchase permissible.

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[3] See explanation 2.

[4] The terms exports and imports are used loosely for purpose of convenience. Strictly speaking when goods are purchased from another province or sold to another province the words import and export cannot be used.

[5] See commentaries on the word "sale" 2(h). As to the difficulties in the application of the rule to exporters and importers see commentaries on Section 2(h) and Introduction under the heading "legal difficulties in working the Act."

A fourth line of classification arises with reference to the **nature of the articles** dealt with. A person (using the term in an extended sense) may be dealing in articles,

(i) which are goods as defined in clause (c) and he is a dealer[6]. Or he may be dealing in articles,

(ii) which are not goods as defined in clause (c) and the person is not a dealer.

Person. The term "person" has not been defined in the Act while, another taxing enactment like the Income Tax Act defines the term 'person' as "including a joint Hindu family."[7] In its grammatical sense it means only an individual. If this construction is adopted, then companies incorporated under the Companies Act which do large business would be outside the purview of the Act for, even explanation I does not cover all classes of cases in which "groups" do business and a large number of companies and other institutions may escape taxation. But the Madras General Clauses Act[8] defines the word 'person' as "including any company or association of individuals whether incorporated or not." The proper view seems to be, to construe the word in its widest significance as including firms, joint family partnerships, and incorporated and unincorporated companies doing business[9].

When two or more individuals combine agreeing to share the profits they form a firm or partnership. When the number of partners in a business exceeds twenty in the case of a business (other than banking) the business is compulsorily to be registered under the Companies Act.[10]

Companies both public and private may be incorporated (registered) or unincorporated (unregistered) and the incorporation may be with limited or without limited liability.[9] All kinds of such partnerships and companies come within this Act. The term person includes a joint family.[11]

Even the Government would be a dealer if it carries on the business of buying or selling goods. For instance, if the Government auctions goods continuously, the turnover of such auction sale may be taxable. It is a principle of law, that in the case of a taxing enactment, even the crown is bound unless it is specially exempted[12]. Similarly a person selling goods to the Government is a dealer and the turnover of such sales is taxable.

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[6] See commentary under Cl. (c).

[7] Sec. 2(9) Income Tax Act.

[8] Sec. 3(22) Madras General Clauses Act.

[9] Sec. 5 Companies Act.

[10] Sec. 4 Companies Act

[11] A.I.R 1934 All. 553 Decision under the Contract Act.

[12] A.I.R. 1935 Bom. 347.

Business of buying and selling goods. The term 'Business' has been defined in the Indian Income Tax Act as including trade, commerce, manufacture, or any adventure or concern in the nature of trade, commerce or manufacture[13] and the definition can be usefully applied to the present Act as well. A person or a concern which purchases raw materials and **manufactures finished products** can be held to be doing business in goods.[14]

The Partnership Act[15] defines the term business as including trade, occupation or profession. But under the present Act, only the business of buying and selling **goods** is affected, and a calling, in which a person holds himself out as willing to sell **skilled assistance or other service,** is unaffected by this Act. Similarly a person or company purchasing and **selling immovable property** is not a dealer. An **insurance company** or a **banking institution** is not a dealer for, there is no turnover of goods. It is doubtful whether a **vendor of stamps** is a dealer under this Act[16].

Carrying on business can exist only when there is a succession of acts. The performance of a single act by a person cannot make him "a dealer".[17] A **casual purchaser** is not within the purview of this sub-section as he is not carrying on the **business** of "buying."[18] It is not every man **that buys that is taxed but only when he is a dealer**[17].

A **whole—sale purchaser** and a **retail purchaser** are dealers for, every time goods are bought or sold there is a dealer. Goods are liable to tax as many times as they change hands[19]. The system of taxation is thus cumulative. But there is no danger of the same article being taxed twice in the course of one transaction.[20] Usually, it is more profitable to a dealer to have the price included in the stage of purchase rather than in the stage of sale; for, the amount to be included in the latter stage is larger than in the former stage[21].

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[13] Sec. 2 (4) Income Tax Act

[14] A.I.R. 1925, Cal. 34 (F.B.) (Case under Income Tax Act.)

[15] Sec. 3(b) Partnership Act

[16] See commentary Sec. 2(c)

[17] A.I.R. 1933 Bom. 422 (Case under Income-tax Act), contra A.I.R. 1925 All. 469 (Premier's speech Legislative Debates Vol. XII, No. 8, p. 579). See A.I.R. 1932 P.C. 138. Windfall not income.

[18] The bill as amended by the Select Committee contained after the words "selling goods" the words "in the course of trade or commerce". These words were omitted by the Legislative Assembly at the instance of the Premier himself as being redundant and as the words "carries on the business of buying or selling goods" sufficiently convey what was intended.

[19] In the Legislative Assembly an attempt was made to change the character of the bill by adding the words "in retail sale to the consumer" in the definition of the word "dealer" thus restricting taxation only to one point i.e., retail sale to the consumer. But the amendment brought for this purpose was opposed and was negatived by the Assembly. (Legislative Debates Vol. XII, No. 8, p. 582).

[20] Sec. 3 (1) proviso (2) (See also Legislative Debates Vol. XII No. 8 p. 579).

Explanation I. This explanation is explanatory of clause (b) which defines the word "Dealer". It cannot be construed as restricting the classes of cases in which 'groups' can be "dealers".

Co-operative Society. Under the Co-operative Societies Act (2 of 1912) a Society may be formed and registered which has for its object "the promotion of the economic interests of its members in accordance with co-operative principles[22]. A Co-operative Society may be registered with a limited or unlimited liability. A Co-operative Society formed for buying and selling goods to its members is not exempt from the operation of the section[23]. **Producers' Co-operative Societies** are not dealers for the purpose of this Act for they function merely as agents[24]. But **Consumers' Co-operative Societies** and stores would be affected by this Act. If a number of consumers join together they cannot claim exemption[24].

A club, a firm or association. A voluntary association of members founded on contract for social and other purposes is a club. A club is distinguishable from a partnership. The latter is the relationship formed between persons who agree to share the profits of a business carried on by all or by any of them acting for all[25].

Persons who have entered into partnership are collectively called "a firm". An association means only an organised body of persons. Thus both a club and a firm are associations or organised bodies of individuals, the distinguishing feature of a firm being the existence of an agreement to share the profits of business.

Which sells goods to its members. It is not clear whether the words govern the word "association" only, or the other words preceding it as well. The latter construction does not seem to be accurate. If the clause is read with the word "firm", there is not much sense for, it is uncommon for a firm to sell goods to its members only. The proper construction seems to be to hold that the words govern only the word 'association'. The Legislature takes care to point out that even concerns, in which the business motive is absent, fall within the definition.

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[21] On the ground that the present provision is advantageous to the mercantile community an amendment to delete the word "buying" from the Act wherever the word occurs, was permitted to be withdrawn after an explanation of the position by the Government. (Legislative Debates Vol. XII No. 8 pp. 579, 580).

[22] Sec. 4 Co-operative Societies Act (2 of 1912).

[23] In the Legislative Council and in the Legislative Assembly attempts were made to exclude Co-operative Societies from this measure as such Societies are not business concerns and are intended to promote the economic interests of the members. But the attempts proved infructuous.

[24] Premier's Reply in the Legislative Council on 18th May.

[25] Sec. 4 Partnership Act.

It is not necessary that sale must be accompanied by delivery[26]. Only property in goods must pass before a transaction is included in the turnover[27].

Explanation II. The object of the explanation is "to bring the agent, responsible for the principal outside the Province, within legal jurisdiction". The explanation is intended to fix liability on the juristic principle applicable to undisclosed and unavailable principals [28]. The effect of the provision is to make the agent living in the Madras Province and doing business for a principal residing outside the Madras Province, a dealer for the purpose of the Act and thus facilitate collection of tax from the agent. Another effect of the explanation is to permit service of notice on agents[28] on behalf of non-resident principals.

Difference between explanation 2 and Section 8.

Explanation 2 of S. 2 (b) provides for taxation of agent[28] where the principal cannot be taxed, while section 8 provides for exemption from taxation where the principal has been taxed. Explanation 2 deals with an agent whose principal is not amenable to the jurisdiction of the Act, while section 8 deals with an agent whose principal is amenable to the jurisdiction of this measure. Explanation 2 applies where agent alone is doing business within this Province, while section 8 applies where both are within this Province.

Agent. This term has not been defined in the Act. But the Contract Act[29] defines an agent as "a person employed to do any act for another or to represent another in dealings with third parties". "The person for whom such act is done or who is so represented is called the principal". The class of agents that is most likely to be affected by this section is the mercantile agent[30]—a person who, in the customary course of business as such agent has authority to sell goods or to buy goods. Practically all classes of agents known to mercantile law come within the mischief of this section, provided that firstly, the agents do the business of buying or selling goods within this province, and secondly, the principals are residing outside this province and thirdly, the transactions are within the province of Madras[31] in consequence whereof there is sale within the Province of Madras. It may be noted that even under the general law[32] if a contract of sale or purchase is made by an agent on behalf of a principal abroad he is personally liable. This section applies this principle for purposes of taxation as well and extends the principle to principals residing outside the province whether outside India or not.

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[26] See commentary to Sec. 2 (h).

[27] An attempt made in the Legislative Assembly to add after "Co-operative Society..............sells goods" the words "accompanied by actual delivery" was unsuccessful. The amendment was opposed by the Premier on the ground that its effect would be to exclude a large body of bigger businessmen from taxation.

[28] Speech of the Premier in the Legislative Assembly. An amendment moved in the Legislative Assembly to delete the explanation was negatived. The wording of the explanation seems to cover taxation of agent, though the Premier said that it is not intended to cover any new taxation.

[29] Sec. 182 Contract Act.

[30] Sec. 2 (9) Sale of Goods Act.

Person resident outside the Province. The reference is to the principal being a resident outside the Province. The Principal may even be a Joint Hindu Family[33].

Who carries on business. To come within the operation of the section, the agent must carry on business within the Province of Madras. An agent carrying on business outside the province is not a dealer.

Shall be deemed to be. The meaning of these words is that whereas in reality the agent is not a "dealer," this Act requires him to be treated as if he were a dealer[34].

(c) "goods" means all kinds of movable property other than actionable claims, stocks and shares and securities and includes all materials, commodities, and articles;

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[31] Agents are of two classes—general and special. Partners (Sec. 18 Partnership Act), Factors (agents entrusted with the possession of goods for sale), brokers (agents who without being entrusted with goods effect sales of goods on commission) belong to the general class of agents. An auctioneer is an instance of a special class of agent employed to sell the property of the vendor by auction. Some other types of agents may also be noticed here.—A person who in his own name buys or sells goods for another (Pfincipal) with a view to earn commission is a commission agent. A commission agent differs from a broker in that unlike the latter, the former purchases or sells in his own name and not in the name of the principal. A *delcredere* agent (e g. *Dubash*) is one who in consideration of extra remuneration or delcredere commission undertakes that persons with whom he enters into contracts on behalf of Principals are solvent. Again, a person may be constituted as agent not only by express authority (Sec. 186 Contract Act) but by implied authority as well Implied authority may be inferrable "from the circumstances of the case" from "things spoken or written" or from the "ordinary course of dealing". (See Sec. 187 Contract Act, and the illustration thereto). A person managing a shop and paying for goods out of the owner's funds with the latter's knowledge is an implied agent. All these classes of agents may come within the section provided other conditions are satisfied.

Even a sub-agent may come within the section for, in law, so far as third parties are concerned, he represents the principal.

Definition of *factor* [1883] 25 Ch.D 31

Definition of *broker* 39 All. 81; 42 Cal. 1050.

Definition of *dubash* 49 Mad. 156.

[32] Sec. 230 Contract Act.

[33] A.I.R. 1934 All. 553 decision with reference to S. 182 the Contract Act.

[34] See 58 M.L.J. 197: 34 C.W.N. 230 (P.C.)

Legislative Changes. The original bill defined goods as including all materials, "commodities and articles other than those excluded from the scope of the Act by a notification in the......... Official Gazette." The Select Committee considered it desirable to exclude stocks and shares and securities and consequently amended the definition. The second change introduced by the Select Committee was to withdraw the power given to the Provincial Government to exclude certain articles from the purview of the Act.

Summary.

"Goods" means

(i) all kinds of movable property
(ii) and includes all materials, commodities and articles.

The following are not goods[1]:—

(i) actionable claims
(ii) stocks and shares and securities.

Movable property. Property is of two kinds—movable and immovable. The term 'movable property' has not been defined in this Act. But the Madras General Clauses Act[2] defines the term movable property as property of every description excepting immovable property and immovable property is defined in the General Clauses Act[3], as including "land, benefits arising out of land, and things attached to the earth or permanently fastened to anything that is attached to the earth[4]. In an early Madras case[5], Justice Holloway defined the term "movability" as "capacity.....in a thing of suffering alteration of the relation of place" and "immovability, as the incapacity for such alteration. If however, a thing cannot change its place without injury to the quality by virtue of which it is what it is, it is immovable property." The term "property" is used as meaning a thing over which Man has dominion.

Standing timber. Under the Transfer of Property Act[6] it is not immovable property. But under the General Clauses Act it seems to be immovable property for, it is attached to the earth and it does not therefore fall within the definition of the term "goods" in this Act.

Immovable property. Immovable property is not 'goods' and is outside this Act.

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[1] For other exemptions in this Act. See Section 2-i proviso and Sections 4 and 5.

[2] Sec. 3 (19) Madras General Clauses Act.

[3] Sec. 3 (14) Madras General Clauses Act.

[4] For the meaning of the words 'attached to the earth' see definition of the words in Section 3 of Transfer of Property Act. The definition of the term 'goods' in Section 2 (7) Sale of Goods Act and the terms immovable property and movable property in Indian Registration Act [Section 2 (6) and Section 2 (9)] may be referred to with profit.

[5] 6 M. H. C. Rep. 71.

[6] Sec. 3 of Transfer of Property Act.

Growing crops and grass. They are attached to the earth and they are immovable property and not movable property under this Act, though they may not be immovable property under the Transfer of Property Act[6], and they would be movable property under the Sale of Goods Act[7].

Money. It is rather surprising that the Legislature has not taken care to exclude from the definition of the term "goods" money as in the case of Sale of Goods Act[7]. In every transaction of sale of goods money is paid for goods purchased and the contrast is between goods and money. So a reasonable construction of the section would exclude money from the operation of the section, though the words used are comprehensive enough to include even money[8]. Otherwise, even Insurance Companies, Banks, etc., which receive money promising to repay money in future, would fall within this definition. But in any case, old coins which are purchased as objects of curiosity are certainly goods and fall within the section.[9]

Includes materials, commodities and articles. These words have been taken from the definition of the term "goods" in the Government of India Act of 1935[10]. The term 'material' connotes matter from which a thing or article is made like the term 'raw material'. The term 'commodity' means 'an article of trade'. The term 'article' means only a thing[11]. The use of the term "includes" shows that what are mentioned as falling within the term "goods" are only enumerative and not exhaustive. Both raw materials and finished commodities fall within this definition[12]. Eatables and food sold by hotels would come within the definition of goods. Newspapers, books and periodicals are goods for the purpose of this Act.

Electricity, gas, water. It is doubtful whether these are goods[13].

Services. Skilled assistance and services are not goods and a person or a company selling such services cannot be said to be dealing in goods. It would be sometimes difficult to distinguish between goods and services. Is a printing press doing job works dealing in goods? The answer is in the negative. If a doctor sells medicine as a business and at the same time practises his profession, the turnover in respect of the former is taxable while the turnover in respect of the latter is not taxable.

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[7] Sec. 3 (7) Sale of Goods Act

[8] See 3 Cal. 379 (whether Currency notes not goods under Section 76 of the Contract Act). See also 19 M.L.J. 283 (half notes).

[9] See (1899) 2 Q.B. III and 25 Bom. 702,

[10] Sec. 311 Government of India Act.

[11] See Oxford Dictionary.

[12] See 52 Cal. 1.

[13] (1883) II Q.B.D. 21; (1909) 2 K.B. 604; (1911) A.C. 116,

Actionable claims. The term 'actionable claim' has the same meaning as a 'chose in action' in English law. The term **chose in action** (movable property not in possession, but realisable by action) is used in English law in contradistinction to the term **chose in possession** (movable property in possession.) For instance, arrears of rent constitute an actionable claim, for, they constitute property realisable by action. But a judgment debt is not an actionable claim; for, no action is needed to recover it[14].

Stocks, shares and securities. Stocks and shares do not mean the same thing[15]. The capital of an incorporated company or a joint-*stock* company, is usually divided into a number of *shares* and the shares are offered for sale to the public. The term "stock" has been defined in the Indian Trustees Act as any "fund, annuity or security transferable in books kept by any company or transferable by deed or transferable by deed accompanied by other formalities[16]." The term "Securities" has been defined in the Indian Succession Act[17] as including "any promissory note, a debenture, stock or other security of the Central Government or of a Provincial Government or any stock or debenture of, or share in a company or other incorporated institution......."

Court-fee stamps or non-judicial stamps—are they goods? It is unfortunate that the terms of Cl. (c) are so wide that even a person licensed to sell court-fee stamps or non-judicial stamps is liable to be taxed on the turnover of sale of court-fee stamps. But this could not have been the intention of the Legislature for, the margin of profit in the sale of such stamps is extremely low; while the turnover is high. The licensed vendors cannot pass on the tax to the purchasers. The Government must make the intention of the Legislature clear by suitable rules in this respect.

Jewellery, precious stones, foodstuffs, groundnuts, jaggery, timber, onions. These are all goods within this Act and are taxable[18].

Business as going concern. Sale of business as a going concern is not a sale of goods within the meaning of this Act though, indirectly goods also are transferred[19].

Other exempted articles[20].

(d) "licence" means a licence granted or renewed under this Act.

NOTES

The word licence means permission to do something. But for the permission, the act done would be illegal[1]. For provisions relating to licences see sections 5, 6 and 8 of this Act.

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[14] Sec. 3 Transfer of Property Act.

[15] See Sec. 29 Companies Act.

[16] See 2 Indian Trustees Act.

[17] Sec. 370(2) Succession Act.

[18] See debates in Legislative Council on the 19th May.

[19] See Premier's reply to Sir F. Birley's amendment in the Legislative Council on the 19th May.

See A.I.R. 1927 P.C. 76.

[20] For other exempted articles see Secs. 2(i). 4 to 7 and commentaries.

[1] See Sec. 52 Easements Act.

(e) "notification" means a notification published in the Fort St. George Gazette.

(f) "prescribed" means prescribed by rules made under this act.

(g) "Province" means the Province of Madras.

NOTES

The Act extends to the whole of the Madras Province or the territory administered by the Governor of Madras aided by his Council of Ministers[1]. Madras is a Governor's Province under the Government of India Act of 1935[2]. This Act (Madras General Sales Tax Act) does not apply to excluded and partially excluded areas administered by the Governor of Madras[3] unless the Governor issues a notification bringing the Act into operation in those areas.

Excluded areas and partially excluded areas in Sections 91 and 92 of the Government of India Act of 1935 correspond to Scheduled Districts as defined in the Scheduled Districts Act (14 of 1874). Under the Government of India (excluded and partially excluded. areas) order of 1936 issued by His Majesty in Council, Laccadive islands (including Minoy), and the Amindivi islands are **excluded areas** while the East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (constitution of Orissa) order 1936, are the **partially excluded areas.**

(h) "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

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[1] See Sec. 3(24) Madras General Clauses Act 'definition of Madras Presidency'.

[2] Sec. 46 Government of India Act 1935.

[3] Sec. 92 Government of India Act 1935.

NOTES

SALE

Legislative Changes. The definition of the word "sale" was inserted by the Select Committee.

Importance of the sub-section. This subsection and the next one are important. The aim of this Act is to tax turnover. As the aggregate amount for which goods are bought or sold represents the turnover, it becomes necessary to determine whether a particular transaction is a sale or not. Generally speaking, in determining whether a transaction is a sale or not, it would be necessary to determine whether title or property in goods has really passed to the vendee. If property in goods has not passed the transaction cannot be included in determining the turnover.

Summary. Where property in goods is transferred there is sale. In certain limited cases however, even where title is not transferred (see explanation) there is sale for the purpose of this Act.

The following are the essentials of 'Sale'

(1) There must be a transfer of property in goods

(2) The transfer must be by one person to another

(3) Such transfer must be in the course of trade or business

(4) Such transfer must be (i) for cash or (ii) deferred payment or (iii) other valuable consideration.

Sale includes

(1) a transfer of goods on the hire-purchase system

and

(2) transfer of goods on other instalment systems

Sale does not include

(1) mortgage (2) hypothecation (3) charge (4) pledge

Grammatical variations and cognate expressions.

Only the word "sale"[1] is defined in this Act. But the other terms used in the Act like 'bought and sold,' 'buying and selling,' 'buyer and seller' have to be understood with reference to this definition.

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[1] Compare the definition of the word "sale" in this Act with the definitions of the term in Sec. 4 of Sale of Goods Act and Sec. 54 of Transfer of Property Act.

TRANSFER OF PROPERTY IN GOODS AND THE PLACE OF SALE

Sale and agreement to sell. Property has been defined in the Sale of Goods Act[2] as general property and not a special property. In other words when **ownership or entire** right in the goods is transferred, and not a **specific right or interest** therein as in the case of a mortgage, hypothecation, etc., the goods are said to be sold. It is only when property in goods is **transferred,** that the goods are said to be sold. But, when the "transfer of the property in goods is to take place at a future time" or is "subject to some condition thereafter to be fulfilled", the contract is only an agreement to sell[3] or only a contract for sale. The term "contract of sale" used in the Sale of Goods Act comprehends both an agreement to sell and actual sale. But in the present Act agreement to sell does not fall within the definition.

Where there is merely an agreement to sell there is no transfer of property in goods, and the transaction cannot be included in determining the turnover. But, if by the passage of time, or by the fulfilment of the condition attached, the transaction becomes a sale[3] and it must then be included in determining the turnover.

The Madras General Sales Tax Act can affect only sales effected **within the Province of Madras.** The word 'sale' has been defined as the passing of property in goods. It would be very necessary to determine the place where the sale of goods takes place, to find out whether a particular sale is to be included in the determination of turnover or not. As applied to exports (buyer being outside the province), or imports (seller being outside the province), the determination of the place where the sale of goods takes place is not free from difficulty[5]. The only rough and ready rule that can be formulated is this. Sale of goods is effected when the property in goods sold is transferred and the sale shall be deemed to be effected at the place where the property in goods sold passes[6]

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[2] Sec. 2 (11) Sale of Goods Act.

[3] Sec. 4 Sale of Goods Act.

[5] See Introduction "under heading legal difficulties in working the Act."

[6] In the Legislative Assembly an amendment was moved to add the words stated above as another explanation to Section 2(h). The amendment was opposed by the Premier as unnecessary and as an attempt to "forestall the arguments in the Federal Court". Though the amendment was negatived the plain wording of the definition of the word "sale" itself would lead only to the conclusion stated above. The Premier in the course of the discussion stated that, for the sake of clarity the Govt. would accept an amendment in the following terms:—"A sale shall be deemed to be effected at the place where either the contract for the sale of goods or actual transfer of property or delivery of goods is effected". But these words go far beyond the scope of the definition of the term "sale" which does not include a contract for sale at all. If the Premier's proposed amendment is correct, then in the case of almost all imported articles, sales can be deemed to be effected in the Madras Province for, the articles are usually delivered in our Province.

For detailed discussion of this aspect see 'Introduction.'

The question arises when and where does property in the goods sold pass?

The rules can be briefly stated as follows:

I. Property in the goods sold passes at such time as the parties to the contract intend it[7]. In other words, the test is whether the dominion or the right of disposal is retained by the seller. If the right is transferred, property in goods passes[8]. The place where parties intend that property in the goods sold should pass is the place of sale[9].

II. If parties have not expressed their intention, certain rules are laid down as to the passing of property.

(a) (i) In the case of **unascertained goods** or **future** goods (goods to be manufactured or to be produced or to be acquired by the seller) the property in the goods does not pass till the goods are ascertained[10]. The place where the goods are ascertained is the place of sale, if on ascertainment the property in the goods passes.

(ii) If however, the contract is for such future goods by description, and goods of that description are unconditionally appropriated to the contract, property passes on such appropriation, and delivery of such goods to a carrier without reservation of the right of disposal, is deemed to be such appropriation[11].

(b) In the case of **ascertained** goods the rules as to the passing of property in the goods are set forth below:—

(A) Cases of immediate passing of property.

(i) When a contract is in respect of specific goods (goods identified and agreed at the time of contract) which are in a deliverable state and when the contract is **unconditional,** property in the goods passes when the contract is made[12].

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[7] Sec. 19 Sale of Goods Act. See also Section 62 Sale of Goods Act.

[8] A.I.R. 1931 Lah. 260.

[9] Ascertainment of intention is made by reference to the terms of the contract, the conduct of parties and the circumstances of the case (Sec. 19 Sale of Goods Act).

[10] Sec. 16 Sale of Goods Act.

[11] Sec. 23 Sale of Goods Act.

[12] Sec. 20 Sale of Goods Act.

The place where the contract is made is the place of sale[13].

(ii) When goods are sold by auction, "the sale is complete when the auctioneer announces the completion of sale" and property in goods passes immediately on such announcement[14]. The place of auction is the place of sale.

(B) Cases of passing of property where conditions are attached. Generally, where conditions are attached to an offer to be performed before acceptance, the place where the conditions are performed is the place of contract[15].

(i) When goods are sent on approval or "on sale or return" system, property in the goods passes when the buyer approves[16] the transaction expressly, or impliedly by conduct[17]. The place where the buyer approves the transaction is the place of sale[18].

(ii) When goods are specific but are not in a deliverable state, property in the goods does not pass till the goods are put in a deliverable state[19]. The place where the goods are put in a deliverable state would be the place of sale, if the property in the goods passes on the act being done.

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[13] The place where a contract takes place is not always easy of ascertainment. (a) When both the seller and purchaser live in the same place, the place where both the seller and purchaser of goods meet and conclude the contract, either personally or through agents by the proposal of the one being accepted by the other is the place, where the contract of sale of goods is made. [See 32 Cal. 884 at page 890]. (b) If however, the buyer and the seller are in different places (as in cases relating to exports and imports) the place where the offer to purchase or to sell goods is accepted by the seller or purchaser respectively, is the place where the contract is made. (c) In the case of offer and acceptance by correspondence, the place where the letter of acceptance of offer is posted, is the place where the contract is made (27 Mad. 355; 32 Cal. 884 at pages 889 and 890: A.I.R. 1931 Cal. 659; A.I.R. 1933 Mad. 761. (Case of acceptance of insurance). See Savigney's 'conflict of Laws' page 214 Burge on 'Colonial and Foreign laws' Vol. III page 753. (d) Where a condition has to be performed for the acceptance of a proposal, the place where the condition is performed is the place where the contract is made. (See 32 Cal. 884 and cases under Section 20 of C.P.C. See also Section 4 Contract Act).

[14] Sec. 64 Sale of Goods Act.

[15] 32 Cal. 884, 889 & 890 English cases cited.

[16] Till approval, express or implied, the property is with the vendor.

[17] Sec. 24 Sale of Goods Act. See A.I.R. 1934 Bom. 360.

[18] The determination of the place of approval, if approval is explicit, may present difficulty if the parties are in different places. Approval may be by correspondence and the place where a letter of approval is posted would be the place of sale.

[19] Sec. 21 of Sale of Goods Act.

(iii) When the seller has to do something to the goods to ascertain the price of goods, property does not pass till the seller does the necessary act[20], e.g., weighing, measuring, etc. The place where those necessary acts are done is the place of sale, if the property passes on those acts being done.

(iv) In certain exceptional cases of contracts, goods are not immediately appropriated to the contract. The property in the goods is retained by the seller, though the goods are shipped to the buyer. The familiar instance of such a contract is typified by the C.I.F. contract, which plays a large part in export and import trade. In C.I.F. contracts, the right of disposal is usually retained by the seller, until the fulfilment of certain conditions, and property does not pass until the conditions are fulfilled[21] or until the right of disposal is relinquished[22]. The place where the conditions are fulfilled is the place of sale[23].

From the foregoing discussion it will be clear, that for the transfer of property in goods, it is not essential that the price should be paid or that the goods should be delivered, unless the parties so agree[24]. Even where delivery is needed as per agreement between the parties, a "delivery of part of goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as delivery of the whole[25]," if it is so agreed by the parties.

Time of sale. The time when the sale shall be deemed to be effected is not expressly stated. But it follows from the definition of the term 'sale' that sale shall be deemed to be effected at the time when property in goods passes[26].

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[20] Sec. 22 Sale of Goods Act.

[21] Sec. 25 Sale of Goods Act. See also Sec. 64 of the same Act.

[22] Mere shipment of goods does not pass the property in the goods sent. (A.I.R. 1928 Bom. 170). But if the bill of lading is endorsed in favour of the purchaser, it shows relinquishment of the right of disposal and the property in the goods passes. If however, the bill of lading is sent to a banker, as an agent of the seller, the property in goods does not pass until the money is actually paid to the banker (A.I.R. 1924 Bom. 325 & A.I.R. 1927 Lah. 391.) See also A.I.R. 1931 Lah. 260.

[23] See introduction under the heading "Legal difficulties in working the Act."

[24] Sec. 5 Sale of Goods Act. It may be mentioned that an attempt in the Legislative Assembly to add the words "accompanied by actual delivery" in explanation (1) to Sec. 2 (b) was unsuccessful.

[25] Sec. 34 Sale of Goods Act. See Ss. 23 (2) and Ss. 33 to 36 of Sale of Goods Act for rules as to delivery.

[26] An amendment moved in the Legislative Assembly to expressly define this matter as the "time when the consideration for sale is paid" was negatived.

By one person to another. The transferor is the seller and the transferee is the buyer. The word "person" includes a joint family[27]. Transfer of goods from one branch of a firm to another branch is not sale, for, there is no transfer from one person to another.

Cash, deferred payment or other valuable consideration. The present Act includes all forms of transfer of property in goods within the term 'sale', whether the consideration therefor is cash, deferred payment or any other valuable consideration. In this respect, the definition is wider in scope than the definition in the Sale of Goods Act, where the price or payment of money consideration is an important element[28]. One practical effect of this seems to be, that even where certain goods are exchanged for certain other goods, such a transaction would fall within the scope of the definition, though it would be outside the purview of the Sale of Goods Act. When old coins[29], valuable as curios, are sought to be exchanged for current coins, the transaction is sale. The transaction of exchange in **Volkart Bros.** case[30] would fall within the purview of the present Act, though it may not be sale under the Sale of Goods Act. Cash connotes present payment, as opposed to, deferred payment or post-poned payment.[31]

For a transaction of sale, existence of valuable consideration or in other words, payment of money or money's worth is an important element[32]. Valuable consideration means, **consideration** which is recognised by law. Consideration is lawful, unless it is illegal, or immoral, or opposed to public policy[33]. The term "valuable consideration," is used in contradistinction to the term "good consideration". The latter, Morals recognise as valuable, but Law does not. Thus 'gift' out of affection is a transaction, which is unsupported by consideration in law, while the transaction is supportable morally, and has thus "good consideration". Where there is however, no consideration at all in law for a transfer, as in the case of gift, the transaction is not within the purview of this Act.

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[27] See commentary under 'person' Sec. 2 (b).

[28] See Sec. 2(10) Sale of Goods Act.

[29] 25 Bom. 702 (In coins not legal tender title does not pass by mere delivery).

[30] 11 Mad. 459.

[31] The bill as amended by the Select Committee used the words 'money or other valuable consideration'. In the Legislative Assembly the Premier moved for the substitution of the words "cash or deferred payment" for the word "money". The substitution makes no material change however.

[32] Sec. 2 (d) Contract Act—definition of consideration.

[33] Sec. 23 Contract Act.

If the **object** of a business is unlawful, but there is consideration for sale conducted in the course of such business, the transaction of sale nevertheless falls within this Act[34]. For instance, a prize chit transaction, under which subscribers contributing monthly subscriptions are given articles as a result of a drawing every month, the unlucky subscribers being given articles after the close of the period of chit, would amount to a lottery[35] but the turnover of the business is certainly taxable; for, there is consideration for the transaction, though the object is unlawful.

Certain practical difficulties are bound to arise, by reason of the use of the words "valuable consideration". If one set of goods are exchanged for other kinds of goods, how is the turnover to be ascertained in terms of money? To avoid administrative and practical difficulties, it would have been safer, if the Legislature had omitted the words "other valuable consideration" in this definition.

Mortgage, hypothecation, pledge or charge. The words mortgage and hypothecation have practically the same meaning. A mortgage or hypothecation is a transfer of an interest in goods for the purpose of securing the payment of money advanced or to be advanced[36]. Neither the Transfer of Property Act nor the Indian Contract Act refers to mortgage of movable property, but a mortgage of movable property has been recognised as valid in law. A mortgage or hypothecation differs from a pledge. In the case of a pledge, possession in the goods is transferred to the pledgee while, in the case of a mortgage, possession is retained by the mortgagor[37]. The word 'charge' has been defined, with reference to immovable property, in the Transfer of Property Act[38]. Broadly speaking, a person can be said to have a charge on certain property, when he has only a right to payment from out of that property, without having any interest in the property. Unlike a mortgage, in the case of a charge, there is no transfer of interest in property[39]. A mortgage, pledge, or, charge, of movable property, is excluded from the category of "sale" in this Act.

Transfer on hire-purchase system and other instalment systems. Transfer on 'hire-purchase system', and transfer on other instalment systems, form exceptions to the rule, that, transfer of property in goods is an essential element in sale for the purpose of this Act. When consideration for sale is agreed to be paid in instalments, it is usually part of the agreement, that title in the goods is retained by the seller, till the instalments are paid entirely. The hire-purchase agreement, is a popular feature of present day business transactions. Under the hire-purchase agreement, the title is retained by the transferor, but the hirer (transferee), who takes possession of the article in question, has the option of either paying the stipulated instalments, and thereby becoming the owner of the article, or of terminating the agreement of hire and delivering the article to the transferor. The hire-purchase agreement differs from sale. In the case of a sale, neither party can cancel the transaction, while, in the hire purchase agreement, the hirer (a person who takes possession) can cancel the agreement. Secondly, in the case of a hire-purchase agreement, title is with the transferor till the entire consideration is paid, while in the case of a sale, title is transferred to the transferee[40]. A hire-purchase agreement differs from, a contract of sale for a price payable by instalments. In the former case, the hirer can terminate the agreement and return the chattel, while in the latter case, the vendee has become the owner, though he can pay the price in instalments, and he cannot therefore terminate the agreement[41].

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[34] 33 Cal. 702. Instance of lawful consideration but unlawful object.

[35] 57 Mad. 923.

[36] Sec. 58 Transfer of Property Act.

[37] 59 Cal. 667: A.I.R. 1932, Cal. 524 at p. 528 Ss. 148 and 172 Contract Act.

[38] Sec. 100 Transfer of Property Act.

[39] See A.I.R. 1932, Lah. 465 (F.B.): 13 Lah. 660; A.I.R. 1934, Bom. 189; A.I.R. 1932, Oudh 336 at p. 340.

Shall be deemed. This Act requires the transactions mentioned in the explanation to be treated as sale, though really they are not sale under the General Law[42].

(i) "turnover" means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover;

Explanation—Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof;

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[40] A.I.R.1932 All. 607 54 All. 781. See also A.I.R. 1938 Nag. 18.

[41] 52 Mad. 829: 57 M.L.J. 618: 30 L.W. 317: A.I.R. 1929 Mad. 884; A.I.R. 1932 All. 607: 54 All. 781.

[42] 31 L.W. 582: 58 M.L.J. 187: 34 C.W.N. 230 meaning of words 'shall be deemed'.

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former; and

TURNOVER

Legislative changes. As the word "dealer" has been defined as including a buyer as well, the Select Committee has added the words "either bought or sold." The explanation has been added by the Select Committee. The proviso providing for exclusion of agricultural or horticultural produce was added by the Legislative Assembly.

Summary and Comments. This is another important subsection of the Act. This section is the "kernel" of the whole Act.

Turnover means,

(i) the aggregate amount for which goods are
(a) bought or (b) sold.

(ii) The buying and selling, must be by a dealer

(iii) The buying or selling may be (a) for cash (b) for deferred payment (c) other valuable consideration.

In determining the amount of turnover

I. the following shall be **included**:—
Sums charged for anything done by the dealer in respect of the goods, (a) at the time of delivery or
(b) before delivery

II. the following shall be **excluded**

(1) any cash discount or (2) any other discount on the price allowed in respect of sale or

(3) any amount refunded in respect of articles returned by customers

(4) turnover of mere accommodating dealer[1] shall be excluded

III. proceeds of agricultural or horticultural[2] produce shall be excluded, if the produce is

(a) grown by a person or
(b) grown on land in which the person has interest as (i) owner (ii) usufructuary mortgagee or (iii) tenant or otherwise[3]

IV. The rule of exclusion and inclusion in II(1) to (4) shall be subject to rules, if rules are framed by the Government.

Aggregate amount. The total amount for which goods are either bought or sold, is the turnover. If goods are sold to A, B, C and D for Rs. 1,000/- each, the aggregate amount of Rs. 4,000/- represents the turnover.

Goods[4]**.** It must be noted, that 'turnover' under this Act includes also, the price for which exempted goods are purchased or sold. The net effect of the provision is, that dealers must show the turnover, not only in respect of goods whose turnover is taxable, but also goods, which are exempt under this Act[5].

Sale of business as a going concern, is not to be included in the determination of 'turnover', though by such wholesale transfer, goods, which form the stock-in-trade, may also be transfered[6].

The amount however includes the amount for which articles manufactured by a person are sold[7], for, manufactured articles are also goods.

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[1] The expression "accommodating dealer" is used for purpose of convenience.

[2] The clause relating to exclusion of agricultural produce found place in the definition of the word "dealer" in the amended bill. But when the bill was introduced in the Legislative Assembly, the exclusion clause, was tacked on to the definition of the term "turnover". Certain verbal changes were introduced in the wording of this clause making the intention of the Legislative clear.

[3] An amendment moved in the Legislative Council to delete the words "grown by himself, etc." was lost.

[4] See Sec. 2(e) definition of the word 'goods'.

[5] An amendment was moved to insert the words "other than goods the sale or purchase of which is exempt from taxation under this Act" after the words "goods" in the definition. The amendment was opposed by the Premier, on the ground that dealers must keep proper accounts even in respect of the turnover of exempted goods, so that Government may judge the exemption properly. The amendment was negatived.

[6] An amendment moved in the Legislative Council to exclude such transfers was withdrawn on the assurance of the Premier, that the Act is not intended to cover such wholesale transfers.

[7] An attempt to exclude from this sub-section the proceeds of a sale by a manufacturer of the goods manufactured by him was unsuccessful in the Legislative Assembly.

See 52 Cal. 1.

Bought by or sold by. The term "buy" has not been defined in this Act. But the definition of sale in clause (h) can be usefully referred to. A transaction, viewed from the point of view of seller is sale and viewed from the point of view of buyer, it is purchase. But the same transaction is not to be taxed, both as sale and as purchase[8].

Dealer. See commentary to clause (b).

Cash or deferred payment. See commentary to Section 2 (h).

Agricultural and horticultural produces. The term 'agriculture' means cultivation of the soil. Horticulture is gardening. Sale of the yield got by a person from agricultural and horticultural operations, or from the land of such person, is to be excluded in calculating the turnover of the seller.

Interest as owner otherwise. The condition precedent to the application of the proviso is, that the person who sells, must either have grown the produce, or it must have been grown on land in which he has an interest. But, if the seller is one who has neither grown the produce nor interested in the land, the proceeds should be included in the turnover. Again, since the policy of the Act is to tax goods every time they are sold, even agricultural and horticultural produce would be subject to taxation, when it is sold by the purchaser of such produce. Thus, if paddy is sold by the actual producer to a trader, the act of sale by the producer is not subject to taxation, but if the produce is sold by the trader to his customers, it can be the subject of tax.

Purchase of agricultural or horticultural produce. It is not clear whether the *purchase* of produce from the actual tiller is exempt from being included in the 'turnover.' But, since sale and purchase are but parts of one transaction, the purchase is not taxable.

Shall be excluded from his turnover. The term 'his' refers to 'dealer'. Proceeds of purchase of agricultural produce, is thus exempt from taxation.

Subject to such conditions and restrictions. When conditions and restriction are prescribed by rules framed under this Act, they shall have predominance. Rules may have to be framed to ensure *bona fides* of the claims for exemption under Sub-section (ii) of explanation to clause (i) and to prevent "misapplication and evasion of the section." Again, in cases coming under Subsec. (iii) rules may require that the dealer who supplies goods and the accommodating dealer, should enter the transactions in their accounts.

Conditions and restrictions. For the meaning of the words see 'Introduction'.

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[8] See Sec. 3(1) proviso.

Prescribed in this behalf. Rules if framed would relate to.

(i) inclusion of charges by dealer till delivery,

(ii) exclusion of discount and refund allowable to purchaser,

(iii) non-inclusion of turnover of accommodating dealer.

Charges at the time of..............or before delivery. Some of the familiar forms of mercantile contracts are C.I.F. Contracts (in which the price of goods covers not only the actual cost of goods, but also insurance and freight) and F.O.B or F.O.R. contracts (Free on Board or Free on Rail contracts). In the case of C.I.F. contracts, the seller makes out an invoice of the goods, ships them (goods), pays the necessary freight, insures the goods, and he sends the buyer the necessary documents, (viz.), the invoice, bill of lading and policy of insurance. These charges are usually included in the price of the goods sold, and they also go to make up the turnover. Similarly in the case of F.O.B. or F.O.R. contracts, the seller puts the goods on board or on rail at his own expense, and the expenses also go to make up the turnover.

The term delivery means "voluntary transfer of possession from one person (seller) to another" (buyer)[9]. Apart from actual delivery of goods to the buyer, delivery may be symbolic. The transfer of documents of title to goods operates, in the latter class of cases, as actual delivery. Further, delivery to **wharfinger** or **carrier,** operates as delivery to buyer[10]. In these cases, the sums charged by the dealer, in respect of the documents of title to goods, or in respect of delivery to wharfinger, etc., have to be included in the turnover of the seller. Under the Sale of Goods Act a **bill of lading** (receipt, for goods actually shipped, granted by the master of a ship), **dock-warrant** (a document granted by a dock-owner to the effect, that goods are deliverable to a person named in it) **ware-house keeper's certificate,** (an acknowledgment by a ware-house keeper that certain goods are deposited in the ware-house). **Wharfinger's certificate,** (a document acknowledging that goods are lying in a person's wharf), **railway receipt,** (receipt issued by the Railway Company for goods delivered for being carried) are documents of title[11]. Charges incurred by the seller, in respect of the abovementioned documents, have to be included in determining the turnover of the seller.

Again, under a contract, a seller may be bound to do something to the goods for putting them into a deliverable state[12], or he may "be bound to weigh, measure, test or do some other act for the purpose of ascertaining the price"[13]. The charges incurred by

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[9] See Sec. 2(2) and Sec 33 of Sale of Goods Act.

[10] Sec. 23 (2) and Sec. 39 Sale of Goods Act,

[11] Sec. 2(4) Sale of Goods Act.

[12] Sec. 9 Sale of Goods Act.

[13] Section 22 Sale of Goods Act.

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the seller, in respect of these matters have to be included in the turnover. Even under the General Law, the expenses incurred in putting goods in a deliverable state, have to be incurred by the seller[14].

It is fruitful to consider the effect of this sub-section on the various transactions of a dealer. In the case of internal trade (trade within the province) sums charged, as stated in the sub-section, go to increase the seller's turnover. In the case of exports and imports, if the sale is outside the province, no question of determination of the turnover arises, and this sub-section does not apply[15]. But if the sale is in law or as part of contract, within the province of Madras, the sums charged go to increase the seller's turnover[16].

Cash discount. The term 'discount' means, any deduction allowed to a purchaser in cash, in consideration of prompt payment or other cause. Thus a wholesale purchaser may get an article worth Rs. 100 at Rs. 95/-, though the face value of the purchase would not show this. It is but fair, that in determining the turnover, the amount of discount should go to reduce the turnover.

Other discount. The reference seems to be to deduction in kind. A purchaser of 100 watches may get discount in kind and he may get about 10 watches free, though the face value of purchase may show payment for 110 watches. It is fair, that this kind of discount calculated in terms of money should be excluded in determining the turnover.

Amount refunded in respect of articles returned. A purchaser may contract with the seller, that unsold articles may be allowed to be returned to the seller and that the seller should refund the price of articles. Exclusion of money thus refunded is only fair. This exemption is intended to cover only cases, where articles in retail sales are returned. In other words, the provision relates to sales 'subject to approval'. It is doubtful[16], whether the exemption applies to resales of goods by customers.

Articles. The word used is "articles" and not "goods."

Dealer accommodating a customer. To accommodate a customer, a dealer, who has not got the goods the customer wants, may purchase goods from another dealer and sell them to the customer. In form, there would be two sales, a sale from one dealer to another dealer, and from the latter dealer to the customer, but in substance there is only one sale—sale from the dealer who has the goods to the customer who purchases the goods and the sale is included in the turnover of only one dealer—the dealer who really sells the goods.

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[14] See Sec. 36(5) Sale of Goods Act—charges under Section 21 to be incurred by seller.

[15] See commentaries to Section 2(h) and introduction on "legal difficulties in working the Act."

[16] Premier's speech on the 10th May. An amendment to substitute the word "goods" for the word for "articles" was moved in the Legislative Assembly but was rejected. (Legislative Debates Vol. XII p. 646).

Immediately. The word means a reasonably short time[17].

Bad debts. Bad debts or debts which a dealer is unable to recover are nevertheless to be included in the turnover[18].

Proceeds of sale of manufactured articles. As already pointed out proceeds of manufactured articles are to be included in the turnover.

(J) "year" means the financial year.

Financial year. Financial year means 'year from the 1st April to the 31st March[19].'

LIABILITY TO TAX, EXEMPTIONS AND MODIFICATIONS[20]

SECTIONS 3 TO 8

GENERAL NOTE.

The provision relating to the general liability of a dealer to be taxed every time there is a turnover, is set out in Section 3. Sections 4 to 8, set out the exemptions and conditions in which the rigour of the general rule is modified. Thus, Sections 4 and 5 set out goods, which are exempt from taxation, while Section 8 exempts certain persons (agents) from the tax. Section 6 sets out the goods (hides and skins) in respect of which, the general rule of cumulative taxation gives place to taxation at a specified point. Section 7 covers export of finished products, in respect of which, the rigour of the tax is reduced by a lowering of the rate of taxation, or to put it in more exact terms, by allowing a rebate.

3

Liability to tax under the Act.

(1) Subject to the provisions of this Act, every dealer shall pay in each year a tax in accordance with the scale specified below:—

(a) If his turnover does not exceed twenty thousand rupees	Five rupees per month.
(b) If his turnover exceeds twenty thousand rupees	One half of one per cent of such turnover.

Provided that any dealer whose turnover in any year is less than ten thousand rupees shall not be liable to pay the tax under this sub-section for that year.

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[17] An amendment moved to delete the word "immediately" was rejected by the Legislative Assembly.
(Legislative Debates Vol. XII p. 646)

See Maxwell's Interpretation of statutes (4th Edition) p. 560.

[18] An amendment which sought to exclude bad debts, from turnover was thrown out by the Legislative Assembly and the Legislative Council.
(Legislative Debates Vol. XII p. 649)

[19] Section 3(10) Madras General Clauses Act.

[20] The above title is inserted only for purpose of convenience. It does not find a place in the Act.

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The following Act received the assent of His Excellency the Governor on the 4th March 1940:—

Act No. II of 1940.

An Act to reduce the scale of tax leviable under the Madras General Sales Tax Act, 1939, for the year beginning on the 1st day of April 1940.

Whereas it is expedient to reduce the scale of tax leviable under the Madras General Sales Tax Act, 1939, for the year beginning on the 1st day of April 1940.

And whereas the Governor of Madras, has by a proclamation under Section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

Now Therefore, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:-

Short title and extent.

1. (1) This Act may be called the Madras Finance Act, 1940.

(2) It extends to the whole of the Province of Madras.

Amendment of Section 3, Madras Act IX of 1939.

2. Sub-section (1) of Section 3 of the Madras General Sales Tax Act, 1939 shall, in regard to the tax payable for the year beginning on the 1st day of April 1940, be construed as if for the words "Five rupees" the words "Four rupees" and for the words "One-half of one per cent the words "One-quarter of one per cent" were substituted.

NOTES.

History of Amendment.

Towards the close of the year 1939, owing to certain political reasons, the Congress ministry went out of office, and the Governor assumed by a proclamation under Section 93 Government of India Act, all the powers of the Legislatures and appointed an Advisory Council. In March 1940 the budget for the year 1940—41 was framed by the Governor acting with his Advisers and it was decided not to **extend** the ministerial policy of Prohibition, but to maintain the **status quo** and **continue** the policy of Prohibition in the four Districts in which the congress ministry had initiated the scheme. The total anticipated net income from all the five taxes introduced by the Congress ministry (see pages iii & iv **Introduction**) was estimated at one crore of rupees during the financial year while prohibition in the four Districts would cost the exchequer only about sixtyfive lakhs of rupees for the year. The Government came to the conclusion that as the five taxes were introduced by the congress party primarily to finance the Policy of Prohibition, the right course is to get only so much money from the new taxes as would be necessary to maintain the prohibition measure in the four Districts. It was therefore decided to reduce the rate of tax by about fifty per cent so far as the financial year 1940—41 is concerned and thereby wipe out the anticipated surplus.

Extent—Madras Province, See page 4 commentaries. Notification for Scheduled Districts, See page 14 commentaries.

Commencement and operation of amendment.

The full title, the preamble, and the operative section of this amendment show that the amendment regarding the slab rate and the percentage rate begin to operate only from 1st April 1940 and would be in operation only for the financial year 1940—41. The present amendment would work itself out by the end of the financial year 1940—41and would cease to have effect on the 1st April 1941. For the subsequent years the original General Sales Tax Act without this amendment would operate (See Sec. 93 (4) Government of India Act.) In fact, the short title of the Act shows that it is a Finace Act rather than a substantive amending Act, its obvious purpose being to solve a problem in Public Finance—the problem of getting rid of anticipated surplus revenue which there is no popular ministry to utilise. The present amending Act is a Governor's Act (Ss 90 and 93 Government of India Act) and can, within the period of one year of its operation be repealed or amended by the Madras Legislatures if they begin to function with a popular ministry before the end of the Financial year 1940—41. (See Sec 93 (4) Government of India Act.)

Short title, Full title, Preamble etc. See commentaries pages XX, 1, 2.

Rebate for 1940-41.

The combined effect of Section 7 of the Madras General Sales Tax Act and the present amendment is that the tax on goods falling under Section 7 is still further halved. After making deduction for rebate, the slab rate would be Rs. 2 and the percentage rate would be 1/8 per-cent in respect of goods falling under Section 7 of the Act.

SUPPLEMENT. **Price annas Four only.**

To face page 6.

The Government have passed orders that a Municipal Council selling rubbish and nightsoil is not a dealer for the purpose of the Act.

To face page 10.

Indent Agents.

"Indent agents claimed exemption from the operation of the Act on the ground that they are not agents in the strict sense of the term as they have no power to enter into binding and conclusive contracts on behalf of their principals. The Government however declined to grant exemption and held that they come within the definition of explanation II to Section 2 (b)

To face pages 35, 37 & 114.

General Sales Tax Rule 4 "Dealing exclusively in such cloth"

In the case of a firm whose head office and branch offices are situated in our Province, the entire firm with branches is a unit, and if one of the branches of the firm deals in cloth other than that woven on a hand-loom, the exemption under section 4 is inapplicable, though the other branches and the head office deal only in hand-loom cloth.

To face pages 35, 37 & 114.

The Government have ordered that with effect from the 1st April 1940 the words 'cloth woven on hand-looms' occurring in section 5 of the Act should be defined as "any fabric made of fibrous material such as cotton, silk, wool or flax, which has been woven on a hand-loom and consequently has a structure of warp and woof." The effect of this extended interpretation is to grant exemption to handwoven carpets and woollen and silk handwoven fabrics and thus grant relief to some important cottage industries in Salem. The exemption is available also to handwoven fabrics made of flax—a kind of wiry erect-stemmed plant whose fibre is used for making linen thread.

To face page 97.

Turnover Rule 5 Sub-rule 2 applies only where the head office and the branches are situated within the Province. If the head office of a firm is outside the Province, but the branches are situated within the Province, the turnover of the branches alone has to be considered in fixing tax. Similarly if the head office alone is situated within the Province, the turnover of the head office has to be considered, the head office alone being the dealer for the purpose of the Act.

To face pages 115 to 118 & 138.

In exercise of the powers conferred under Section 35 Court Fees Act 1870 His Excellency the Governor of Madras is pleased to remit the fees payable... upon the undermentioned applications and the documents accompanying such *applications* :—

Applications made under rule 5 (I), 6 (2), 6 (7), 6 (8) or 9 of the Madras General Sales Tax Rules, 1939.

(*Fort St. George Gazette dated 23rd April 1940 page 549*)

In view of the notification extracted above all kinds of applications for grant of licence, or renewal thereof and applications for rebate, need not be stamped.

Provided further (1) that in respect of the same transaction of sale, the buyer and the seller shall not both be taxed, but only one of them, as shall be determined by the rules made in this behalf under sub-section (2) shall be taxed thereon, and (2) that, when the amount for which any goods were bought by a dealer has been included in his turnover, the amount for which the same goods were sold by him shall not be included in his turnover, for the purposes of this Act.

(2) The turnover for all the purposes of this Act shall be determined in accordance with, and the tax shall be assessed, levied, and collected in such manner and in such instalment as may be prescribed by, the rules made by the Provincial Government in this behalf:

Provided that no rule for the determination of the turnover shall come into force unless approved by a resolution of the Legislative Assembly.

(3) Subject to any rules made under sub-section (2), the assessing authority may fix the turnover of any dealer in any year at the amount of his turnover in the previous year.

Legislative changes. The original bill provided for the levy of two fixed slab rates where turnover was less than Rs. 40,000/- per year and fixed a percentage of turnover as the basis for tax only when the turnover exceeded the amount. But the Select Committee considered the fixing of two slabs of fixed taxation as unnecessary and accordingly decided that percentage basis should apply to all cases of turnover exceeding Rs. 20,000/- and that a slab rate should be fixed for turnover between Rs. 10,000/- to Rs. 20,000/-. Secondly, the slab rate of Rs. 75/- payable annually as originally fixed was reduced to Rs. 60/-, payable in monthly instalments of Rs. 5/-. Thirdly, the Select Committee provided for the framing of rules relating to levy and collections of the tax. Other minor changes were introduced by the Select Committee.

Summary and comments. The liability of a dealer to pay tax in each year is as specified below:—

i A dealer whose turnover is less than Rs. 10,000/- is not liable to tax for that year.

ii A dealer whose turnover is Rs. 10,000/- and over but does not exceed Rs. 20,000/- shall pay Rs. 5/- per month (Rs. 60 per year).

iii A dealer whose turnover exceeds Rs. 20,000/- in a year shall pay ½%, i.e., 0-8-0 for Rs. 100/- of the amount of the turnover.

Exceptions and modifications.

i The liability is subject to the other provisions of the Act. (Thus a dealer coming under Sections 4, 5 and 8 is not liable to tax. A dealer coming under Section 7 gets a rebate of one half of the tax. A dealer coming under Section 6 is liable to be taxed only at one point.)

ii In respect of a transaction of sale, both the buyer and the seller are not to be taxed but only one of them.

iii In the case of purchase of goods, when the amount of purchase is included in the turnover of the purchaser, it shall not be included in his turnover when the goods are sold by the purchaser.

iv The assessing authority may fix the turnover in any year at the amount of the turnover in the previous year.

Rules. Broadly speaking, rules may relate to a substantive matter as in the case of rules for the determination of turnover, or they may relate to a mere procedural matter. To the former category belong rules relating to the determination of turnover. Rules relating to the determination of turnover do not come into operation, unless approved by the Legislative Assembly.

Rules determining turnover would provide

a Who [seller or purchaser] shall be taxed (Section 3 proviso 2)].

b For the matter of inclusion and exclusion mentioned in [Section 2(i)].

c Determination of turnover, when return is incorrect or incomplete [Section 9 subsec. 2(b)].

Procedural Rules relate to—

a Submission of returns [Section 9(1)].

b Manner of assessment, levy and collection of tax [Section 3(2) and Section 10.]

c Instalments in which the tax is to be paid.

Other rules. See below.[1]

Subject to the provisions of this Act. The other provisions to which Section 3 is subject are Sections 4 to 8.

Limits of exemption, slab rate, and percentage rate. If the turnover of a dealer is Rs. 9,999 or is less than Rs. 10,000/- he is exempt from tax, but if the turnover is Rs. 10,000/- or over the sum the slab rate of Rs. 5 per month begins to operate, till the turnover exceeds Rs. 20,000/-. If the turnover is Rs. 20,000/- the slab rate operates while if the turnover exceeds Rs. 20,000 the percentage rate of ½% applies[2].

Each year, any year, previous year. Sub-sec. (1) & (3). Section 3(1) makes it clear, that the tax every year is to be fixed with reference to the turnover for that very year. Unlike the Income-tax Act which provides for assessment being based on the income of the previous year[3], the normal basis of assessment in this Act is the turnover of the year in respect of which the tax is levied. This is the rule. But sub-section (3) provides, that the assessing authority "may fix the turnover in any year at the amount of his turnover in the previous year." From the point of view of administrative convenience, fixing the rate for a year with reference to the turnover in the previous year, has much to commend itself.

The object of sub-sections (1) & (3) of this section seems to be this. The tax on turnover shall not have retrospective operation. So only turnover after the coming into operation of the Act, is to be taxed. But, "for the sake of convenience the tax may be initially (for the first year,) fixed on the basis of a turnover of a previous period[4]". So power is given to the assessing authority to fix the turnover in a year, with reference to the turnover of the previous year and if the turnover later on is found to be less than the turnover of the previous year, it is only just that the excess should be refunded[5]. It is for this reason, that the assessment under sub-section (3) is made subject to any rules made under sub-section (2) and the rules may provide for matters relating to refund of excess tax collected, or for collection of excess tax due[6].

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[1] Rules relating to *assessment and licences*. Special cases of assessment, see rules under S. 19(2)(c) to (e).

Exemptions and modifications see rules under Ss. 5 to 8.

Licences see rules under Ss. 5, 6, 8 and S. 19(2) (b).

[2] Rules relating to *machinery* and *procedure* Appeals see rules under S. 11.

Maintenance of accounts see forms under S. 13.

See also rules under S. 19(f) to (k.)

[2] An attempt to increase the limit of exemption to Rs. 20,000/- was thrown out by the Legislative Assembly. In the Legislative Assembly a number of amendments were moved relating to (1) turnover. (2) rate of tax, (3) and percentage of tax. Similar amendments were brought in the Legislative Council as well. The aim of these amendments relating to turnover was firstly, to exempt from taxation turnover of less than Rs. 20,000/- and secondly, to fix the slab rate of Rs. 5/- for turnover up to Rs. 40,000/-. The amendments relating to rate of tax, sought to reduce the rate of tax from Rs. 5/- per month to Rs. 2/- per month or to Rs. 2½/- per month. Similarly the percentage of tax was sought to be reduced to ¼% or ⅛%. But all the amendments were rejected. (Legislative Debates Vol. XII parts 9 to 11).

[3] A.I.R. 1934, P.C. 34.

[4] Report of the Select Committee.

Previous year. The year under this Act is the financial year and the 'previous' year referred to is the previous financial year. The Income-tax Act[7] defines the 'previous year' as "the twelve months ending on the 31st day of March next preceding the year in which the assessment is to be made, or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee, the year ending on the day to which his accounts have so been made up..........."

Sub-sec. 1, Proviso 2. The proviso is a safeguard against double taxation. The first part of the proviso provides, that the same *transaction* shall not be taxed twice over in relation to both the parties (seller and purchaser) at the same time. The second part of the proviso is, that the same *person* shall not be taxed twice over[8]. The rule can be illustrated as follows:—Suppose A, B and C are dealers under the Act and B purchases goods from A and sells them to C. The rules to be framed under sub-clause (2) would provide whether A or B shall be taxed on the turnover of the sale of the goods but both shall not be taxed, since the seller and purchaser shall not be taxed in respect of the same transaction of sale. B is the purchaser and if the price of goods is included in the turnover of B, it shall not again be included in his turnover when he sells them to C. But C will be taxed. But supposing the price of the goods is included in the turnover of A and not in that of B, then B's turnover is not taxable in respect of his purchase from A, but his turnover is likely to be taxed in respect of his sale of the goods to C. But C will not be taxed in respect of his purchase[9].

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[5] In the report of the Select committee it is stated that the rules would provide also for refund of excess tax collected.

[6] An amendment moved in the Legislative Council providing for refund of excess of tax collected was withdrawn on the assurance of the premier that the matter would be provided by rules.

[7] See 2(11) Income Tax Act.

[8] For provisions as to relief of double taxation see Sec. 2(i) (iii) and Sec 8. Still another provision against double taxation of goods see Sec. 4.

[9] See, Legislation Debates (Vol. XII, No. 8, p. 573.

Determine......................turnover. Determination of the turnover is the first step in applying the provisions of this Act. After the determination of the turnover the tax is to be assessed, levied and collected. The determination of the turnover is not a simple matter. The rules as to inclusion or exclusion embodied in Section 2 (i) may have to be applied. The goods mentioned in Sections 4 and 5 may have to be excluded, if a dealer carries on business both in goods which are exempt from this Act as well as in those which fall within this Act. For rules relating to the determination of turnover see—Rules.

Assess, levy and collect. The term "assess" means "fix the amount of tax." The term "levy" means "impose the tax". The terms used show the different stages which pass before the tax is actually realised under this Act.

[8]**Provincial Government.** The General Clauses Act defines the term "Provincial Government" as the "Governor acting or not acting in his discretion and exercising or not exercising his individual judgment according to the provision in that behalf made by and under" the Government of India Act of 1935.

Proviso to sub-section 2. A resolution by the Legislative Assembly is a necessary step to be taken by the Government. Approval of the rules framed under sub-section (2) by a resolution of the Legislative Assembly, is a condition precedent to the coming into force of the rules, if the rules relate to the determination of turnover.

Legislative Assembly. This is the lower house of Legislature in the Madras Province, the upper house being known as the Legislative Council. The rules have to be approved only by the Legislative Assembly and they need not be placed before the upper house for approval. The Legislative Assembly would then get another opportunity of scrutinising the rules. Making of rules under an enactment is a piece of executive legislation and it is a salutary provision that the Legislature would be called upon to express its opinion on the rules[9].

Application of the Act.

4. The provisions of this Act shall not apply to the sale of electrical energy, motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act, 1939, manufactured tobacco as defined in the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and any goods on which duty is or may be levied under the Madras Abkari Act, 1886, or the Opium Act, 1878.

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[8] Sec. 3 (43) General Clauses Act.

[9] An amendment which sought to substitute the words "resolutions of both the Houses of Legislature" for the words "a resolution in the Legislative Assembly" was negatived in the Legislative Council.

Legislative changes. This section was added by the Select Committee, in order to exempt goods which are already subject to taxation under other enactments.

Summary and comments. In one sense this section also embodies a rule providing for relief from double taxation.

This Act does not apply to

(1) sale of electric energy which is taxed under the Madras Electricity Duty Act (1939).

(2) sale of motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act (1939).

(3) sale of manufactured tobacco as defined in Act VIII of 1939, i.e., the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939.

(4) goods on which duty is levied under the Madras Abkari Act (1886).

(5) goods taxed under the Opium Act (1878).

Levy of duty on sale of electric energy. Under Section 3 of the Madras Electricity Duty Act (1939), a duty at the rate of 6 pies per unit of energy is leviable if the licensee has sold electricity at a price of more than two annas per unit.

Tax on sale of motor spirit. Under Section 3 of the Madras Sales of Motor Spirit Taxation Act (1939), a tax is levied "in the case of petrol at the rate of one anna and six pies per gallon and in the case of any other motor spirit at the rate of six pies per gallon".

Tax on manufactured tobacco. Section 4 of the Madras Tobacco Act of 1939 provides for the taxation of retail and wholesale dealers. Wholesale dealers have to pay a tax of 2 per cent on the turnover of their business. Retail dealers have to pay a tax fixed at certain slab rates in certain cases and on their turnover in other cases.

Levy of duties under the Madras Abkari Act.

The Madras Abkari Act levies duties on all kinds of liquor and intoxicating drugs, (e.g., toddy, spirits, beer, country liquor, etc.,) opium alone being excluded[10].

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[10] See Ss. 17 to 23 of the Madras Abkari Act.

Taxation under the Opium Act. Section 6 of the Opium Act empowers the Provincial Government to make rules subject to the payment of duty to regulate any of the following matters:-- (a) Possession of opium. (b) Transport of opium. (c) Importation or exportation of opium. (d) The sale of opium and the form of duties leviable on sale of opium by retail[11].

It must be noted that if goods are not exempt under Section 4, they are taxable on the turnover of their sales. Thus electrical goods are not taxable under the Electricity Act but they are taxable on the turnover of their sales. Again, only manufactured tobacco is exempt from tax. Other kinds of tobacco like leaf tobacco, are taxable under this Act. See rules.

5. Exemptions from taxation.

Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, the sale of bullion and specie, of cotton, of cotton yarn, and of any cloth woven on handlooms and sold by persons dealing exclusively in such cloth shall be exempt from taxation under section 3.

6. Sale of hides and skins.

Subject to such restrictions and conditions as may be prescribed including conditions as to licences and licence fees, the sale of hides and skins, whether tanned or untanned, shall be taxed under section 3 only at such single point in the series of sales by successive dealers, as may be prescribed.

7. Sales of certain goods for delivery outside the province.

In respect of such finished articles of industrial manufacture as may be notified by the Provincial Government and subject to such restrictions and conditions as may be prescribed, a rebate shall be allowed of one-half of the tax levied on sales of such articles for delivery outside the province if such articles are actually so delivered.

Legislative changes. These sections were added by the Select Committee.

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[11] See Madras Opium rules—notification No. 463 dated 18—11—1932.

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Summary and comments.

I. The following are exempted from taxation under Section 3:—

(1) Sale of bullion and specie.

(2) Sale of cotton.

(3) Sale of cotton yarn.

(4) Sale of any cloth.

(a) Woven on handloom and (b) sold by persons dealing exclusively in such cloth.

But the exemption is subject to restrictions and conditions as may be prescribed including conditions as to licences and licence fees.

II. Hides and skins shall be taxed at a single point:—

This also is subject to restrictions and conditions as may be prescribed including conditions as to licences and licence fees.

III. A rebate is allowed of one-half of the tax.

(i) Rebate is allowed only in respect of finished articles of industrial manufacture.

(ii) The articles entitled to rebate must be notified by the Provincial Government.

(iii) Rebate is allowed only if the articles are manufactured for delivery outside the province.

(iv) Rebate is allowed only if the articles are actually delivered outside the province.

This is also subject to restrictions and conditions as may be prescribed.

IV. The exemptions and modifications as already noticed are subject to restrictions and conditions as may be prescribed by rules.

Subject to restrictions and conditions (in Sections 5 to 7). See Introduction—Interpretation of the Act—meaning of words.

Restrictions and conditions (in Sections 5 to 7). See Introduction—Interpretation of the Act—meaning of words.

Licences and licence fees (in Sections 5 to 7). See Introduction.

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Sale. The words "sale" or "sales" are used in Sections 5 to 7. Is the purchase of these articles not exempt from tax? As both purchase and sale are indivisible parts of the same transaction, purchase of the articles is also exempt. To avoid ambiguity the Legislature could well have used the words "purchase or sale."

Bullion and specie. Bullion is the mass of precious metal (gold or silver) before it is used for coinage. Specie is metallic money (Gold, Sovereign or Dollar) as opposed to paper money. In the case of bullion and specie, the turnover is unusually large while the profit is very low and the imposition of tax would, it was represented, practically drive out the entire business. For instance, in a turnover of Rs. 30,000/- in *bullion* business the gross income would be Rs. 100/- and the net income would be about Rs. 80/-. Similarly by a turnover of Rs. 25,000/- business in *specie*, the profit would be Rs. 12/- only, while the tax would come to Rs. 125/-.

Jewellery and precious stones. It must however be noticed, that sale of jewels and precious stones like diamonds is not exempt from taxation under this Act.

Food-stuffs. It must be noted that food-stuffs and articles of necessity like salt are not exempt from tax and sales of these articles are to be included in the determination of turnover[12].

Cotton. Sale of cotton is exempted with a view not to interfere with the export of cotton. This is a concession in favour of the exporters. Not only the sale of cotton by the producer of cotton, but even sale by the purchaser of cotton to other retail sellers is exempt. Export of cotton is thus exempt from taxation; though, if the cotton is converted into yarn and then made into a finished product like cloth and exported, it would get only a rebate of one half of the tax under Section 7. This is rather anomalous.

Cotton yarn. Sale of cotton yarn produced not only from a spinning wheel (charka) but even from a spinning mill is exempt.

Cloth woven on handloom. Sale of cloth is exempt only if it is woven on handlooms and the sale is by a dealer dealing *exclusively* in such cloth. So, if cloth is woven in a weaving mill the exemption cannot be claimed. Similarly, if cloth woven in a handloom is sold by a trader dealing both in handwoven cloth and mill made cloth, or by a trader selling handwoven cloth and other articles as well, the exemption cannot be claimed. The All India Spinners Association which only sells handspun and handwoven cloth is exempt. But a grocery merchant selling common food-stuffs to the villagers and also handwoven cloth, cannot claim exemption. But this is not the intention of the Legislature and the intention of the Legislature would be made clear in the rules[13].

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[12] An amendment moved in the Legislative Council to exempt food-stuffs and other articles of necessity was negatived.

Exempt from taxation (Sec. 5). The exemption is only from taxation under Section 3 but the dealer must nevertheless pay the licence fee if any fee therefor is prescribed.

Hides and skins. The term "hides" comprehends both raw and dressed skin. Raw hides are to be tanned (converted into "leather by soaking it in tannic acid or other mineral salt"[14]) and the leather passes hands frequently before being made into fine foot-wear and other finished products. The point at which hides and skins are to be taxed is to be prescribed by the rules.

Groundnut, sugar, jaggery, onions, timber. These articles do not come within the exemption and they are taxable[15].

Rebate. The term means 'reduction in the amount or discount.'

Finished articles. The words "finished articles" are often used as opposed to raw material. The term 'finished' connotes a completion in the process of manufacture. A partially finished article or raw material cannot come under this section. Even articles, provided they are finished products manufactured by cottage industries, are entitled to rebate, if they fall within Section 7. Only finished articles notified by the Provincial Government would be entitled to rebate[16] if they satisfy the requirements of Section 7.

For delivery outside the province. All sales of finished articles notified by the Government are entitled to rebate if the articles are exported outside the province.

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[13] An amendment was moved in the Legislative Council to substitute for the words "dealing exclusively" the words "who do not deal in any cloth other than those produced on handlooms," since the section as it stands would deny the benefit of exemption to a merchant dealing exclusively in handloom cloth and also non-textile articles. The Prime Minister opposed the amendment but assured the council that there was no danger of such "far-fetched misapplication of the provisions" and said that the object would be made clear in the rules and instructions to executive officers. The amendment was lost.

[14] See Oxford Dictionary.

[15] Amendments were moved in the Legislative Council to include in Sec. 6 groundnut, sugar, onions, jaggery, timber and turmeric but they were rejected.

[16] An amendment in the Legislative Council to exempt all sales or purchases of goods for delivery outside the province was rejected.

Delivery. Delivery is 'the voluntary transfer of possession from one person to another'[17]. Mere transfer of title is insufficient to claim exemption. Possession also must be transferred.

Actually so delivered. Delivery to the carrier or wharfinger or other forms of symbolic delivery are also sufficient to attract the operation of the section. The Legislature is anxious to see, that to claim exemption, the articles exported are clearly taken outside the province so that they may not compete with the articles within the province which are not subject to rebate[18].

Sale of business as a going concern. The Act does not cover wholesale transfers of business and such transfers should be excluded in the calculation of turnover[19]. See also rules framed under this Act.

8.

Licensing and exemption of agents.

The Provincial Government may, on application and on payment of such fee as may be prescribed in that behalf, license any person under this section who for an agreed commission or brokerage buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax under section 3 such of his transactions as are carried out in accordance with the terms and conditions of his licence:

Provided always that, save where the transaction consists of a sale by a grower of produce grown by him or on his land, no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made, or would have been so included but for an exemption provided under this Act.

Legislative changes. This section was added by the Select Committee. Some changes were introduced in the Legislative Assembly to make the object of the section more clear.

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[17] Sec. 2(2) Sale of Goods Act.

[18] Rules as to delivery see Ss. 33 to 39 Sale of Goods Act.

[19] In the Legislative Council an amendment was moved to specifically exclude such transfers. Sir F. Birley moving an amendment to exclude such transfers said that when a business is sold as a going concern, it is not easy to distinguish between the price paid for the stock-in-trade and that which is paid for goodwill, etc. If such sales are not exempted, the tax would be evaded to a very large extent by putting only a nominal price for the stock-in-trade. On the assurance of the Prime Minister in the above terms the amendment was withdrawn.

Scope of the section. The section may be contrasted with explanation II to Section 2(b). By implication, it seems that this section providing for exemption applies to agents of principals residing within the Madras Province. This section has to be read with section 3(1) proviso (2). The benefit of exemption under this section would be available, if either the principal has been taxed, or is exempt from tax under section 3(1) proviso (2) or section 5.

Summary and comments. This section embodies another class of exemptions as applied to *persons* while section 5 relates to exemption as applied to *goods*.

The following are the essentials of the section :—

1. The provincial Government exercises power under this section.
2. The power is to be exercised (a) on application and (b) on payment of fee (c) the payment of fee, being in accordance with rules made under this Act.
3. The nature of the power under the section is :—
    - (i) to license a person who,
        - (*a*) buys or sells,
        - (*b*) for an agreed commission or brokerage,
        - (*c*) on behalf of known principals,
        - (*d*) the known principals being specified in his (agent's) accounts and,
    - (ii) to exempt from tax under Section 8 transactions carried out in accordance with the terms and conditions of licence.
4. The power is exerciseable only if the amounts for which goods are sold are included in the turnover,
    - (*a*) of the principals,
    - (*b*) or of the vendors (dealers from whom goods are purchased),
    - (*c*) or would have been included but for exemption in this Act.
5. The condition imposed (see point 4) is not necessary in the case of a sale of produce,
    - (i) grown by him (seller) or (ii) on his (seller's) land

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Illustrations of principles of section. This section must be construed consistently with Section 3 (1) proviso (2) for, in a sense this section also may be held to embody a rule against double taxation. The principle of the section is, that in respect of one transaction both the principal and the agent ought not to be taxed. Transactions include both sales and purchases. The section and the proviso may be illustrated thus. A is an agent buying or selling on behalf of B for an agreed commission, the name of B being shown in A's accounts. He has to take out a licence and if he acts in accordance with the terms of licence, transactions entered into by him would be exempt, provided that the requisites in the proviso are satisfied. The principles underlying the proviso can be illustrated as hereunder.

I. EXEMPTED GOODS.

(A) Transaction relating to agricultural produce. (Sale and purchase). If A **sells** on behalf of B produce grown by him (B) or on the land of B by another,[1] the sale is exempt from taxation; for, even the sale by the principal B is not liable to be included in turnover. Similarly, if A **purchases** on behalf of B agricultural produce as falls within the proviso to Section 2 (i), A is not liable to be taxed.

(B) Transactions relating to other exempted goods. Suppose A buys or sells on behalf of B goods exempted from taxation under Section 5, e g., bullion, cotton, or cotton yarn, then A's transaction is not taxable; for, the articles are exempted articles and the price of the goods would have been included but for the exemption provided in this Act.

II. NON-EXEMPTED ARTICLES.

Suppose A sells on behalf of B to D goods (not exempt under this Act), purchased by himself on behalf of B from C three things are possible.

Transaction of purchase by A on behalf of B (Sale by C.)

(i) The price of goods might have been included in the turnover of C.—(inclusion in turnover of seller)

or

(ii) The price of goods might not have been included in the turnover of C but might have been included in the turnover of B.—(inclusion in turnover of purchaser-principal)

or

(iii) The price of goods might not have been included in the turnover of either B or C.

In the first two cases the agent is exempt from taxation while in the third case the agent is liable to be taxed.

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[1] See proviso to Sec. 2 (i).

Transaction of sale by A on behalf of B (Sale to D.)

The price of goods might have been included in the turnover of B (A's principal) at the stage of purchase, or, it might not have been included in the turnover of B at the stage of purchase. In the **former case,** B is not to be taxed in respect of sale to D,[2] and the price need not be included in the turnover at the stage of sale to D, and exemption would be available to A under this section; for, exemption is available to the principal within the meaning of the proviso to this section. In the **latter case,** B is not exempt from taxation and the price has to be included in B's turnover at the stage of sale to D. B is liable to be taxed[2] and if the price is included in B's turnover, A may be exempt from taxation.[3] If however, in the latter case the price is not included in the turnover of B at the stage of sale, A is liable to be taxed[3].

The Provincial Government. See commentary on the words in Section 3 (2).

On application. The section contemplates applications being made by agents for licences being issued to them. The class of agents that would be most affected are 'mercantile agents' as defined in Section 2 (9) Sale of Goods Act.

License any person. Licence see sec. 2 (d) **'persons'.** The reference is to 'Agents[4]'.

Rules prescribing fee. Rules made under this Act would prescribe the fee payable for such licences.

Agreed commission or brokerage. The terms brokerage and commission are synonymous. The commission or brokerage must be agreed to between the parties (principal and agent) and not be left undetermined.

Known principals specified in the accounts. The principal must be known and specified in the accounts. The word 'principal' means a person for whom an agent does an act or a person whom an agent represents[4]. The term "known principal" has a significance somewhat similar to the words "disclosed principal" as used in the Contract Act[5]. Where the principal is not known, or where the principal is not disclosed, the agent is personally liable under the General Law[5] for contracts entered into by him, and in this Act his transactions cannot be exempt from taxation and he cannot be licensed under this section.

Exempt from tax. Exemption is only from tax under Section 8 and there is no power under the section to exempt an agent from payment of licence fee.

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[2] See proviso 2 to Sec. 3 (1).

[3] Vide proviso to Sec. 8.

[4] For definition of agent see commentary to Sec. 2 (b) explanation 2 pages 9 and 10.

[5] Sec. 230, Contract Act.

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Transactions carried in accordance with .... licence. Exemption from tax is available only if transactions are carried out in accordance with licence.

Sale of produce. The exemption of the sale of produce in this section is necessitated by the exemption granted in the proviso to Section 2 (i).

Would have been included but for exemption. The words must be construed liberally. These words provide for sales by agents being exempt from taxation, if *goods* are otherwise exempt from taxation, or if the *principal* is otherwise exempt[6].

ASSESSMENT AND REALISATION OF TAX[7]

SECTIONS 9 AND 10.

GENERAL NOTE

These sections set out the procedure in the assessment and realisation of tax. Tax is realised either when it is *voluntarily* paid or when it is *recovered* by process of law.

9. Procedure to be followed by assessing authority.

(1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns of his turnover, in such manner, and within such periods as may be specified in the rules made under sub-section (2) of Section 3.

(2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall proceed to determine the turnover in accordance with the rules made under sub-section (2) of Section 3:

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

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[6] See Sec. 3 (1) proviso (2)

[7] The title is inserted only for purpose of convenience. It does not find a place in the Act.

10. Payment and recovery of tax.

The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of assessment, not being less than fifteen days from the date of service of the notice. In default of such payment, the whole of the amount then remaining due may be recovered as if it were an arrear of land revenue.

Legislative changes. Two important changes were introduced in the Legislative Assembly in section 9 in the bill as amended by the Select Committee. While in the bill as amended by the Select Committee, a dealer might be *required* to submit a return, under the present Act the *duty is cast on the dealer* to submit the return. Secondly, while in the bill as introduced in the Assembly there was a slight distinction between submission of returns by dealers with less than Rs. 20,000/- as turnover and by dealers with turnover of more than that sum, under the present Act all dealers have equally a duty cast upon them to submit a return, provided they are liable to be taxed.

Summary [1].

1. A dealer whose return exceeds Rs. 10,000/- in a year shall submit a return[2].

2. If the return is submitted, and
   - (a) if it is correct and complete, the assessment is to be on the basis of the return.
   - (b) If it is inaccurate and incomplete,
     - (i) the assessee is to be given an opportunity of proving the correctness and completeness of the return,
     - (ii) and then the assessment is to be in accordance with the rules under section 3 (2).

3. If the return is not submitted, the assessment is to be in accordance with the rules under section 3 (2).

Submission of return. Only dealers whose return is more than Rs. 10,000/- should submit a return. The reason is, that exemption from tax is granted in respect of dealers with turnover for less than that sum[3]. The obligation to submit a return is with the dealer. It is not necessary that any notice should be sent by assessing authorities to dealers to submit returns.

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[1] Cp. Ss. 21 to 23 of Income-tax Act.

[2] Cp. sec. 22(1) of Income-tax Act provides for issue of notice through the press for submission of returns.

[3] See sec. 3 (1) proviso (1).

Return for a year. The wording of the section shows that return should be submitted only for turnover if it exceeds the sum of Rs. 10,000 for **a year.** If in a year the turnover is less than the sum, though the dealer might have had a turnover for a larger sum in the previous years, he need not submit a return for the year in respect of which the turnover is less than the sum of rupees ten thousand.

Rules for return to be prescribed. The number of returns to be submitted, the manner of submitting return or returns, the periods within which return or returns should be submitted, and the determination of turnover otherwise than on the basis of return submitted, are all matters to be determined by rules to be framed.

Compulsory submission of return. Failure to submit return if it is wilful, is punishable[4]. The Act thus compels the submission of returns by dealers voluntarily. The return to be submitted must be true. Wilful submission of an untrue return is punishable[4].

Proper return, no proper return, complete return, incomplete return, correct return, incorrect return, no return. In considering what a valid return is for purposes of this Act, some of the decisions under Income-Tax Act may be useful. A return must comply with the rules framed under this Act, for the rules have the force of law[5]. A return which totally ignores the statutory rules relating to the form of return cannot be considered to be any return under this Act[6] and can be treated as nullity[6]. A return which is not in the "prescribed form and verified" was held to be not a proper return[7]. Similarly, mere signature in the prescribed form without making any entries in the columns therein but with the addition of the word "blank" in the column entitled "total" was held to be no return[8] under the Act. In the undermentioned case an assessee with a view to correct a prior return sent by him sent another statement of return in Hindi, but it was not in the usual printed form. There was, however, a letter requesting the officer to substitute the figure in the statement in the printed form sent with the letter. It was held that the facts constituted a substantial making up of a return[9].

A return in the prescribed form mentioning the sums approximately and without disclosing even the period to which the sums mentioned in the return related, was held to be not a return[10]. A letter in which a person only intimated non-liability was held to be no return[11]. Similarly a return which deliberately fails to give the total turnover of all the branches of a firm but mentions the turnover of only some of the branches is no return[12]. A return in which accidentally there is a bonafide omission, would seem to be an incomplete return. But a return which is neither signed nor verified, cannot be held to be an incomplete return, though it may not be a proper return. Incompleteness contemplated in the section is not incompleteness arising from nonverification[7]. A return which accidentally fails to take note of a number of items of turnover may be held to be an incorrect return. The obligation to give an opportunity to the assessee to show the correctness or completeness of the return arises only in the case of a return which is incomplete or incorrect and not in the case of a return which is no return at all.

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[4] Sec. 15 (a) of this Act. See also Sec. 19 (h).

[5] Sec. 19 (h) *Ibid.*

[6] A.I.R. 1928 Rang. 108 (F.B.)

[7] A.I.R. 1931 All. 939. A.I.R. 1934 All. 729.

[8] A.I.R. 1928 Lah. 729.

[9] A.I.R. 1929 All. 919.

[10] A.I.R. 1935 Lah. 858.

[11] A.I.R. 1931 Pat. 306 (F.B.)

Return by agent. In the case of returns signed and verified by agents, officers must satisfy themselves about the authority of such agents[13].

Return of branches. Return can be called for in respect of the branches of a business[14]. See rules under this Act.

Time for submitting return. Return is to be made within the period specified in the rules. But, it was held in a case under the Income-tax Act that, where a return is not filed in time, but is produced before assessment is actually made, it cannot be disregarded[15]. If return is made after assessment is made it is not valid[16].

Determination on the basis of return. If the return is correct and complete the return is the basis of assessment. The return must also be true; for, wilful submission of an untrue return is punishable[17].

Reopening assessment. Once an officer has made an assessment on the basis of return, the assessment is settled and it cannot be reopened[18] except to the extent provided in this Act[19].

Determination in accordance with rules. If a return is incorrect or incomplete, the assessment is to be in accordance with the rules to be prescribed[20]. But the officer cannot assess a person at a certain arbitrary figure without stating the basis of his computation[21].

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12. A.I.R. 1933 All. 197.
A.I.R. 1925 All. 385.
13. A.I.R. 1935 Oudh 305.
14. A.I.R. 1930 All. 19.
A.I.R. 1933 All. 197.
15. A.I.R. 1932 Cal. 410.
16. A.I.R. 1936 Lah. 468.
17. Sec. 15.
18. A.I.R. 1938 Cal. 557.
Decision under Income-tax Act
19. Sec. 19 (f).
20. Cp. Sec. 23 Income-tax Act confers power to assess to the best of judgment in certain cases.
21. A.I.R. 1931 All. 23.

Reasonable opportunity of proving correctness or completeness. Where no return is submitted or where no proper return is submitted, no question of giving an opportunity under the proviso arises. But, where the return submitted is incorrect or incomplete, the authority must give an opportunity to prove the correctness or completeness of the return.

Notice to produce evidence. Section 9(1)(*b*) resembles Section 23(2) of the Income Tax Act. For the nature of the opportunity to be afforded to a dealer to prove the correctness or completeness of his return, see rules framed under this Act. A notice would be issued to the dealer to "prove the correctness and completeness of his return"[22].

Contents of notice. Decisions under the Income Tax Act have held that the notice would ordinarily state the grounds of objection[23] and should permit an assessee to let in evidence in support of his return. A notice which gave an assessee only an option to appear in person without any right to lead evidence, words to that effect having been scored out in the notice, was held to be illegal[24].

Is rule as to opportunity mandatory? Object of rule. The rule enjoining the grant of opportunity to prove the correctness or completeness of return seems to be mandatory. Decisions under the Income Tax Act have held that, normally the issue of notice under Section 23(2) is mandatory[25] though, in the case of a person who persistently makes false returns and cooks up accounts for Income Tax purposes, the rule as to notice is not obligatory[26]. The reason is this. The object of the proviso to Section 9 is to meet cases of omission in a *bona fide* return in which everything is mentioned to the best of the information available by the assessee. The section is not intended to cover a case of deliberate omission to furnish particulars which were available with the party withholding information at the time of submission of return[27].

Nature of evidence to let in. In showing the correctness of a return an assessee may have to let in not only direct, but circumstantial evidence as well[28].

Reasonable time. Grant of reasonable opportunity includes grant of reasonable time within which an assessee can let in requisite evidence. What constitutes reasonable time or reasonable opportunity is a question of fact[28]. Notice calling upon a party to produce evidence within a few hours was held to be not the reasonable time contemplated by law[29].

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[22] Cp. Sec. 23(2) I.T. Act.

[23] A.I.R. 1929 Rang. 102 (F.B.)

[24] A.I.R. 1937 All. 770 : I.L.R. 1937 All. 834.

[25] A.I.R. 1925 Cal. 890 A.I.R. 1937 All. 770.

[26] A.I.R. 1929 Rang. 102 (F.B.)

[27] A.I.R. 1933 All. 197.

[28] A.I.R. 1938 Lah. 209.

[29] A.I.R. 1931 Cal. 729 (S.B.)

SECTION 10

Legislative changes. The bill as amended by the Select Committee provided for payment of tax in the Government treasury. But in the present Act as amended in the Legislative Assembly, the tax can be paid in such manner as may be specified. Secondly in this Act the word "may" was substituted in the Legislative Assembly for the word "shall" in the words "shall be recovered."

Summary. The section[30] deals with **payment** of the tax and the **recovery** of the tax in default of payment. Payment may be as mentioned in the notice:

(i) in such manner,
(ii) in such instalments, } (as mentioned in the notice.)
(iii) and within such time

If there is default, the amount of tax is to be recovered.

Recovery of tax may be as if it were an arrear of land revenue.

Payment. The place where payment is to be made, the time when payment is to be made and other details will be specified in the notice of assessment. But at least 15 days must elapse from the date of service of the notice and the date fixed for payment.

In default. Default is failure to pay. It may be wilful or it may be due to forgetfulness or negligence to pay the tax.

May be recovered. Firstly, the mode of recovery need not necessarily be as if the tax were an arrear of land revenue. Recovery by the procedure prescribed in the Madras Revenue Recovery Act is one of the modes of realising the tax. The crown can even sue and get a decree and realise the tax after attachment of property as an ordinary debt. Secondly, the whole amount need not necessarily be recovered. Recovery may be a matter of discretion[31].

As if it were. The use of the words "as if it were" shows that the demand of tax does not stand in the same position as arrear of land revenue. Unlike land revenue the tax is not declared to be a first charge. So attachment and sale of land for recovery of the tax does not free the land from any charge, or mortgage already created on the land[32]. "Where right has been already created (as in a mortgage) in favour of a subject before the right of the crown commences", the crown is not entitled to any preferential treatment unless the statute declares that the debt due to the crown is a first charge. Words of this kind are absent in the present enactment. Therefore a tax under this Act is not a first charge. But the general principle of law preferring the crown's debt to that of the subject when both stand on the same footing, nevertheless applies[33]. Thus, the crown has priority over other *unsecured* creditors[34] and when the property of an assessee is attached in execution of a simple money decree and money is deposited in court, since attachment by decree-holder creates no right in property, the crown can step in and recover any tax due to the Government[35] without suit or attachment[36].

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[30] Secs. 45 & 46 Income Tax Act.

[31] Premier's speech (Legislative Debates Vol. XII p. 853).

[32] Statutes declaring priority of Crown debt—see the following:—

Sec. 61 Provincial Insolvency Act.

Sec. 49 Presidency Towns Insolvency Act.

Sec. 230 Companies Act.

Arrear of land revenue. The modes of collection of land revenue are indicated in the Madras Revenue Recovery Act (2 of 1864). Under Section 5 of Madras Revenue Recovery Act the arrear of revenue with interest and costs can be recovered by the sale of the defaulter's movable or immovable property or by execution against the person of the defaulter[37].

SPECIAL TRIBUNALS UNDER THE ACT [1]

SECTIONS 11 AND 12

GENERAL NOTE

These two sections set out the appellate and revisional tribunals constituted under this Act, the procedure to be followed by or before such tribunals and the powers of such tribunals.

11. Appeals.

(1) Any assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed:

Provided that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be.

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[33] A.I.R. 1935 Sind 232 : 159 I.C. 972. (Case under the Abkari Act).

[34] A.I.R. 1937 Rang. 380 (Case under Incometax Act). A.I.R. 1936 Mad. 602 : 70 M.L.J. 601 : 43 L.W. 725 : 59 Mad. 872. (Case relating to Court Fee).

[35] A.I.R. 1936 Mad. 132 : 59 Mad. 428 : 69 M.L.J. 832 : 42 L.W. 918. (Case under Motor Vehicles Taxation Act).

[36] A.I.R. 1938 Mad. 360 : I.L.R. 1938 Mad. 744 : 47 L.W. 368 : 1938 M.W.N. 197 : 1938 (1) M.L.J. 351. (Case under Income Tax Act).

[37] *Procedure in movable property.* Distraint Ss. 8 to 21 sale of movable property Ss. 22 to 24.

Procedure in immovable property. Attachment Ss. 25 to 35 and sale of immovable property Ss. 36 to 47.

Procedure in arrest Ss. 48 and 49.

[1] Title is inserted for purpose convenience. It does not find a place in the Act.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit.

(4) Every order passed in appeal under this section shall, subject to the powers of revision conferred by section 12, be final.

12. Revision. The Board of Revenue may in its discretion at any time either *suo motu* or on application, call for and examine the record of any order passed by, or any proceedings recorded by, any officer or person under this Act for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate.

Difference between Sections 11 and 12.

Appeal.	Revision.
1. An assessee has to move.	The Board of Revenue may act either *suo motu* or on application.
2. Objection to assessment is the basis for an appeal.	The Board of Revenue may call for and examine the record of *any order* or *any proceedings* for satisfying itself as to the legality or propriety of order.
3. The right is a statutory one conferred on party.	Interference in revision is only discretionary and no party has a statutory right.
4. Appeal should be preferred within 30 days.	No period of limitation is prescribed for an application for revision. Interference may be "at any time".
5. Appeal is to be accompanied with proof of payment of tax.	No such restriction is imposed.

6. Before disposing the appeal an opportunity should be given to assessee of being heard.	No such restriction is imposed.
7. Appeal is to be in the prescribed form and verified in the prescribed manner.	No such restriction is imposed.
8. Appeal is only against an order of assessment.	Revision can be not only against an order of assessment but even against an order passed in appeal[2] as well.

Objecting to an assessment. Under Section 9(2) if the assessing authority is satisfied that the assessee's return is correct and complete, assessment has to be made on the basis thereof. If however no return is made, or if the return submitted is inaccurate or incomplete, the assessing authority has to proceed to determine the turnover in accordance with the rules made under Section 3(2) and the rules would provide for assessment in such cases.

When the rules made under Section 3(2) confer power to determine turnover and assess even in the absence of a return, or in the case of an incomplete return, right of appeal can be invoked in such cases of assessment as well.

The general words "objecting to an assessment" comprehend objections on various grounds, *e.g.*, that the assessee is not a dealer, that he has no taxable turnover, that the goods are entitled to exemption under this Act, that he is entitled to rebate, that sales did not take place within the province of Madras, etc.[3] If a party does not object to assessment but complains against the proceedings of assessing officers under this Act (*e.g.*, under Section 14) he has no right of appeal, but the propriety of the proceeding can be examined in revision under Section 12. Whether an appeal lies against an order of a licensing authority—see rules.

It seems consistent with common sense that normally, before a plea is taken on appeal objecting to assessment, the same plea must have been taken before the assessing authority[4].

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[2] See sec. 11(4)

[3] Sec. 30(1) of Income Tax Act is more specific and sets out the various classes of cases in which an appeal will lie.

[4] A.I.R. 1931 Lah. 601. Case under Sec. 30 of Income Tax Act whose wording is somewhat different.

Can a fresh ground be admitted by the appellate authority? Even the cases decided by High Courts under the corresponding provision of the Income Tax Act are not unanimous. While the High Court of Lahore has held that an appellate authority has no power to admit an additional matter, the Chief Court of Oudh has held that an appellate authority would be exercising jurisdiction erroneously if it declines to admit fresh matter which goes to the root of the assessment[5]. The latter view has been accepted in the amended Section 31(2-*a*) of the Income Tax Act. The correct view seems to be that in exceptional cases a fresh ground may be admitted in appeal if its omission is neither wilful nor unreasonable.

Within thirty days......................assessment. In determining the period of thirty days, the day on which notice of assessment was served must be excluded[6].

Extension of time. The present Act is a special Act, an Act taxing turnovers only, and a local Act, an Act applicable only to the Madras Province within the meaning of Section 29 of the Limitation Act and therefore, Ss. 4, 9 to 18 and 22 would apply in computing the period of limitation, unless the applicability of these provisions is expressly excluded by this Act[7].

The practical effect of the application of the provisions of the Limitation Act would be, in the first place, to permit an assessee to prefer an appeal on Monday if the period of thirty days expires on Sunday or, if the appellate tribunal is closed, appeal can be preferred on the reopening day[8]. Similarly, if copy of order of assessment is to be filed along with the appeal[9], the time taken in obtaining the copies may have to be excluded[10]. Similarly, if facts call the application of Section 18 of Limitation Act, the benefit of the section would be available.

Notice of Assessment. (See Section 10).

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[5] A.I.R. 1937 Lah. 830: 18 Lah. 825. A.I.R. 1937 Oudh 416.

[6] Sec. 9(b) Madras General Clauses Act and Sec. 12(1) of the Limitation Act. Cp. Sec. 66-A. Income Tax Act—exclusion of date of order.

[7] The sections of Limitation Act provide for the following:—

Sec. 4. If court is closed when period expires appeal can be presented on reopening day.

Sec. 12 Exclusion of time in legal proceedings—obtaining copies, etc.

Sec. 18. Effect of fraud—extension of limitation period.

[8] See Sec. 11 of Madras General Clauses Act. See also Sec. 12 Limitation Act.

[9] See Sec. 11(2) and rules prescribed.

[10] 4 I.T.C. 90. (Case under Income Tax Act).

Cp. Sec. 66A Income Tax Act excluding time requisition for obtaining copies.

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Satisfactory proof of payment. Under Section 10, the manner of payment, etc., would be specified in the notice of assessment. If the notice directs payment in the Government treasury, the money has to be paid in the treasury and receipt has to be obtained. Receipt showing such payment would be a satisfactory proof of the payment.

Admitted by the appellant..................may be. An assessment may be objected to in one of two ways. Either the *entire* assessment may be objected to, or non-liability may be pleaded in respect of a *portion* of assessment. In the *latter* case the admitted amount has to be paid. In the *former* case however, the instalment amount which has fallen due till the date of appeal has to be paid; for, under Section 10 notice of assessment may direct the assessee to pay the money due in instalments. The entire amount of tax need not be paid. Thus, where non-liability is pleaded only in respect of a portion of assessment, the entire admitted amount and not any instalment is to be paid. This seems to be rather anomalous.

Prescribed authorities—prescribed form—and verified in prescribed manner. The authority to whom an appeal is to be preferred, the form of appeal and verification are to be as prescribed by rules under this Act[11].

Object of verification. The object of verification is to fix responsibility for the materials set forth in the grounds of appeal[12]. Under the C.P. Code pleadings are verified[13]. The effect of verification is that false verification may render a party liable to be convicted under Sections 191 and 193, I.P.C.

Absence of verification—effect. If an appeal is not verified in the prescribed manner the appellate authority may reject the appeal *in limine*[14].

Opportunity of being heard. Usually a notice would be sent to the assessee to be present in person or by pleader and address the authority in support of the grounds of appeal.—See rules.

Such orders....................as such authority may think fit. No limit is imposed as to the manner of disposal of appeal. The appellate authority may confirm, reduce, enhance or annul assessment, or set aside the assessment and direct the assessing authority to make a fresh assessment[15].

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[11] Sec. 2 (f) meaning of the term 'prescribed'.

[12] A.I.R. 1931 Mad. 679. (Case relating to pleadings.)
43 Cal. 1001.

[13] Order 6 Rule 15 C.P. Code.

[14] A.I.R. 1929 Pat. 409 : 8 Pat. 796. (Case under Income Tax Act.)

[15] Cp. Section 31 of the Income Tax Act.

(Sec. 11. Subs. 4) **Every order..............final.** The finality of order is subject to the interference in revision under Section 12. It is a moot point whether finality attaches only so far as tribunals constituted under this Act are concerned or whether the order is not to open challenge even in a civil court[15].

Summary of Section 12

1. The authority that must act is the Board of Revenue.

2. The Board of Revenue may act in its discretion (its interference is discretionary)

3. The Board may act

   (*a*) *suo motu* (of its own accord)
   or
   (*b*) on application.

4. The power of interference is available as against any officer or person acting under this Act except in regard to orders or proceedings of the court or Magistrate.

5. The procedure in interference under the section is to call for and examine the records.

   The records may relate to

   (i) proceedings recorded by any officer or person acting under this Act
   or
   (ii) any order passed by any officer or person acting under this Act.

6. The purpose of interference by the Board is to satisfy itself :

   (*a*) as to the legality of order
   or
   (*b*) as to propriety of order
   or
   (*c*) as to the regularity of proceedings.

7. Nature of order that can be passed is not limited. The Board may pass such order as it thinks fit.

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[15] A.I.R. 1935 Mad. 298 (2): 58 Mad. 949. See also 38 Mad. 41.

In a case decided under the District Municipalities Act, in construing the term 'final' in Schedule IV, Rule 28 of the rules under that Act, it was held that finality attaches only to proceedings before the tribunal constituted under that Act and such finality cannot shut out the jurisdiction of civil courts.

See also commentaries to Ss. 17 and 18.

COMMENTS

May in its discretion. Interference in revision is only discretionary. There is no statutory right on the part of an assessee to claim interference. The discretion vested is of course not arbitrary discretion. Where interference would hinder and not promote justice, the Board would not interfere.

At any time. No time limit is prescribed for interference.

Suo motu or an application. Interference may be of its own accord (*suo motu*) or an application. The application contemplated in the section seems to be an application by an aggrieved party[1]. But on the application of a third party, the Board may act *suo motu* if the case really calls for interference[2].

Interference in revision—need to approach lower authority. On the principle that a revisional authority will not interfere when another remedy is open, it seems that the Board will not ordinarily interfere with an assessment, if an appeal could be, but not filed under Section 11. The procedure under Section 11 must be exhausted before interference in revision is sought. But jurisdiction to interfere in revision with assessment even when no appeal is filed, is not ousted and in extraordinary cases, the Board may interfere even when the appellate authority is not approached.

Record of any order...........or proceedings[3]. The words used in the section are very comprehensive. Not only orders but all recorded proceedings are liable to be interfered in revision. Thus, even in respect of the records of proceedings of licensing authorities or in respect of records of proceedings under Section 14, the power of interference in revision can be invoked.

Legality or propriety of such order[3]. The power of examination by the Board seems to extend both to the law and to the facts applicable to the case before it. The Board has to satisfy itself not only whether an order or proceeding is legal, but whether it is proper in the circumstances of the case.

Such order as it thinks fit. No limit is imposed as to the method of disposal. The prime object of the Legislature seems to be to see that justice is done[4]. Mere illegality may not be sufficient to call forth interference unless prejudice is made out[5].

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[1] 24 All. 443. (Case relating to revision under Cr.P.C.) A.I.R. 1933 All. 678. (Case under Cr.P.C.)

[2] 56 All. 158: A.I.R. 1933 All. 678. Case relating to revision under Cr.P.C.

[3] Cp. the words of Section 435 Cr.P.C.

[4] A.I.R. 1924 Mad. 586. (Case under C.P.C.)

[5] A.I.R. 1932 Mad. 157 and A.I.R. 1935 Mad. 89. (Cases relating to revision under C.P.C.)

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Orders or proceedings of any court or Magistrate.

See section 15 and section 19(3) and rules under section 19 for proceedings before magistrates.

Proceedings in civil and criminal courts are subject to the ordinary incidents of civil and criminal procedure with right of appeal, and with ultimate power of revision in the High Court[6]. The Board of Revenue has no power of revision over the ordinary tribunals of the land.

DUTIES OF DEALERS AND POWERS OF OFFICERS[1]

SECTIONS 13 AND 14

GENERAL NOTE

The sections set out the duties of dealers and licensees on the one hand the powers of some of the officers acting under this Act on the other.

Accounts to be maintained by dealers.

13. Every dealer and every person licensed under Section 8 shall keep and maintain a true and correct account showing the value of the goods sold and bought by him; and in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf:

Provided that this section shall not apply to petty dealers whose business is such as is not likely to make them liable to taxation under this Act.

Powers to order production of accounts and powers of entry and inspection.

14. (1) Any officer empowered by the Provincial Government in this behalf, may, for the purposes of this Act, require any dealer carrying on business in any kind of goods to produce before him the accounts and other documents, and to furnish any other information relating to such business.

(2) All accounts and registers maintained by dealers in the ordinary course of their business, the goods in

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[6] *Civil.*
Sec. 115 C.P.C.
Sec. 96 and Or. 41 C.P.C. First Appeal.
Sec. 100 & Or. 42 C.P.C. Second Appeal.

Criminal.
Secs. 435 and 439 Cr.P.C. Revision.
Secs. 404 to 431 Cr.P.C. Appeals.

[1] The title is inserted for purpose of convenience. It does not find a place in the Act.

their possession and their offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officers as may be authorized in this behalf.

(3) Any such officer shall have power to enter, for the purpose referred to in sub-section (2), any office, shop, godown, vessel, vehicle or any other place in which business is done.

Legislative changes. (Ss. 13 & 14.) Section 13 was inserted by the Select Committee which inserted also a new sub-clause to Section 14 as it originally stood "investing the officer empowered by the Provincial Government in the behalf, with the power of requiring the production of accounts or other documents or information, so as to minimise the use of the power to enter and inspect".[2]

Summary (Section 13)

1. The obligation to maintain accounts is on the part of (a) dealers and (b) persons licensed under Section 8.
2. The persons must maintain a *true* and *correct* account showing the value of goods sold and bought.
3. They shall maintain a true and correct account in such form as may be prescribed, (if the accounts maintained by them do not show the value of goods bought and sold in an intelligible form).
4. Petty traders who are not liable to taxation (*e.g.*, with turnover of less than Rs. 10,000) are not obliged to maintain accounts.

COMMENTS

True and correct. A true and correct account for the purpose of this Act would mean an account reflecting all the transactions both on the credit and debit side and showing intelligibly the value of the goods sold and bought. An account which does not give a complete or correct version of actual business was held to be an unreliable account[3]. Similarly, vouchers are necessary to check account books and in their absence the accounts are no better than the mere word of the assessee[4].

Goods sold and bought. Accounts should show the value of every kind of goods bought and sold irrespective of the question whether the articles are entitled to exemption partially or wholly under Sections 5 to 7. As applied to certain classes of business like coffee hotels, this provision is likely to cause very considerable inconvenience.

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[2] Report of Select Committee (p. 211 Fort St. George Gazette Part IV dated 25-4-39).

[3] A.I.R. 1936 Lah. 836. (Case under Income Tax Act.)

[4] A.I.R. 1936 Lah. 856. (Case under Income tax Act.)

Form .... as may be prescribed. The obligation to maintain accounts in the form prescribed by rules made under this Act, arises only if the accounts maintained in the ordinary course do not show the value of goods sold and bought in an intelligible form. For definition of (prescribed) [see section 2(f)].

Proviso. The object of the proviso is to exempt from the operation of the section petty traders who are not likely to be affected by this Act as their turnover is less than Rs. 10,000 per year.

Summary. (Section 14)

There are three sub-clauses in the section. Clause 1 deals with the **production** of accounts or other documents or furnishing of information. Clause 2 deals with the power of **inspection** by officers while Clause 3 deals with the power of **entry** by officers.

Production of accounts, etc. (Clause 1).

1. The person that can act under this sub-section[5] is an officer *empowered* by the Provincial Government.
2. The officer *may* act *only for the purpose* of this Act.
3. The power exercisable is to require a dealer (a) to produce accounts or other documents and (b) to furnish other information relating to such business.

Power of inspection (Clause 2)[6]

1. Power is to be exercised only by such officers as may be authorized in this behalf.
2. The following can be inspected (a) accounts and registers maintained in the ordinary course of business by a dealer, (b) goods in the possession of dealers, (c) Offices, Shops, Godowns, Vessels, and Vehicles of a dealer.
3. The inspection is to be at a reasonable time.

Power of entry (Clause 3)[7].

1. Power is exercisable by such officers as may be authorized under Sub-Clause (2).
2. The power is confined to entry into the office, shop, godown, vessel, vehicle or any other place in which business is done.
3. The power is to be exercised for the purpose referred to in Sub-Clause (2) (*i.e.*, inspection).

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[5] Cp. sub-section 22(4) Income-tax Act.

[6] Cp. Sec. 39 Income-tax Act.

[7] Unlike the Income-tax Act the present Act confers power of entry for inspection. While an Income-tax Officer entering the premises of an assessee for inspection would be committing an offence of trespass (A.I.R. 1926 Lah. 326) an officer entering premises under this Act commits no offence.

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COMMENTS

Officer empowered. Sub-section (1) requires that the officer who is to act under this sub-section must be empowered by the Provincial Government; for, the power exercisable under the sub-section is not the ordinary duty of any other officer. For acting under Sub-section (1) an officer has to be empowered, even as for acting under Sub-sections (2) and (3) it is necessary that an officer should be authorized. It does not appear that the power granted to an officer to act under this sub-section can be delegated by the officer to his subordinates[8].

Provincial Government. See Section 3 (43) General Clauses Act and commentary to Section 3 at page 33.

For the purpose of the Act. Exercise of power under Sub-section (1) can be only for the purpose of assessment under Section 3.

Business. See commentary to Section 2 (b).

Dealer. See commentary to Section 2 (b).

Any kind of goods. All persons who carry on business in any kind of goods including goods exempted under this act, can be ordered to produce accounts or to furnish any information required relating to business.

Other documents. A document is any "matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or may be used as evidence of that matter".[9].

Accounts and registers. Section 13 sets out what kind of accounts should be kept by a dealer. Not only accounts but registers are also open to inspection. For instance, registers showing the stock-in-trade and other articles are also open to inspection. All kinds of accounts and registers whether regularly kept or not are open to inspection.

Godown. Godown or warehouse is the place where goods are stored.

Vessels. The word means ships or boats. Right of inspecting ships or boats in which goods are brought is also conferred.

Vehicles. The term means "carriages of any kind used on land." For instance a motor lorry which may carry goods are open to inspection.

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[8] The section was criticised in the Legislative Council as giving almost "inquisitorial powers" to the officers under the Act and in order to safeguard misuse of power under the section, an amendment was moved that the officer so empowered should not be below the rank of a Revenue Divisional Officer. On the assurance of the Premier that the Government would pay attention to the matter in choosing officers the amendment was withdrawn.

[9] Sec. 3(9) Madras General Clauses Act.

Reasonable times. Inspection is to take place at reasonable times. For instance, usually the inspection of a shop would be during hours when it is likely to be open.

OFFENCES AND COMPOSITION[1]

SECTIONS 15 AND 16

GENERAL NOTE

The sections deal with offences and the penalties for offences in case of conviction and the composition of offences in case the offences are compounded. In short, the sections deal with proceedings in courts against assessees and licensees under this Act even as Sections 17 and 18 deal with proceedings against officers and the crown under this Act.

Offences and penalties.

15. Any person who—

(a) wilfully submits an untrue return or fails to submit a return as required by the provisions of this Act or the rules made thereunder, or

(b) fails to pay the tax due from him within the time allowed, or

(c) prevents or obstructs inspection or entry by any officer authorized under Section 14, in contravention of the terms thereof, or

(d) fraudulently evades the payment of any tax due under this Act, or

(e) wilfully acts in contravention of any of the provisions of this Act,

shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees, and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first during which the breach continues.

Composition of offences.

16. The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence—

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[1] Title is inserted for purpose of convenience. It does not find a place in the Act.

(a) where the offence consists of the failure to pay, or the evasion of, any tax recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees.

Legislative changes. The original bill made even the submission of an incorrect or incomplete return punishable. The Select committee considered that unconscious omissions or mistakes should not be made punishable and consequently substituted the words "wilfully submits an untrue return"[2] in Sec. 15.

Summary. In this Act offences are punishable by (1) a Presidency Magistrate or (2) by a 1st Class Magistrate with fine extending to Rs. 1,000/- and the following are the **offences:**

	The following are the conditions for **composition.**
(a) Wilful submission of an untrue return or failure to submit a return as required by this Act or the rules.	Payment of a sum not exceeding Rs. 1,000/-.
(b) Failure to pay tax within the time allowed.	Payment of tax due and either money not exceeding Rs. 1,000/- or double the tax recoverable whichever is greater.
(c) i. Prevention of inspection. ii. Prevention of entry. iii. Obstruction of inspection. iv. Obstruction of entry. of an officer authorised under sec. 14 in contravention of the terms thereof	Payment of a sum not exceeding Rs. 1,000/-.
(d) Fraudulent evasion of payment of tax due under this Act.	Payment of tax due and either a sum not exceeding Rs. 1,000/- or double the amount of tax whichever is greater.
(e) Wilful act in contravention of the provisions of this Act.	Payment of a sum not exceeding Rs. 1,000/-.

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[2] Offences under the present Act are very much wider than the provisions of section 51 of Income Tax Act where conviction can arise only in the absence of reasonable cause.

In the case of a continuing breach fine may extend to Rs. 50/- per day.

Construction. Section 15 embodies a penal provision and the section must be construed strictly. (See Introduction).

Offence. The term means any act or omission made punishable by any law for the time being in force[3]. The penal provisions of this statute seem to be analogus to the provisions of Municipal enactments[4], and excise enactments[5] and *mensrea* or criminal intent of persons seems to be immaterial, except to the extent expressly provided in this section. [See Cl.(b) and (c) whose terms are very wide.]

Clause (a) wilful submission of untrue return. Under Section 9 (1) return has to be submitted "in such manner and within such periods" as may be specified by the rules. The return has to be correct and complete. But, only if the return is wilfully untrue, this section makes the submission of the return punishable.

Wilful. The term 'wilfully' has not been defined in this Act. The term 'wilful' is a familiar term in law and generally "it implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing and is a free agent"[6]. The term 'wilfully' means deliberately or intentionally or purposely[7]. The term has no reference either to the *bona fides* of the person acting or to the motive of the person acting.

Untrue, incorrect and incomplete return. To constitute an offence under the first portion of clause (a) of this section return must be untrue. A false return is an untrue return. But it is not every incorrect or incomplete return that can be held to be an untrue return. "If there are unconscious omissions or mistakes"[8] the return cannot be held to be an untrue return, much less is it a *wilful submission* of an untrue return and no offence is committed. It may be noticed here that, if a mere incorrect or incomplete return—a return with unconscious omissions or mistakes is submitted, the officer is under an obligation to give an opportunity to the dealer to prove the correctness or completeness of the return.[9]

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[3] Section 4 (o) Cr. P.C.

[4] See Maxwell's Interpretation of statutes p. 165 (4th Edition).

[5] A.I.R. 1932 All. 592.

[6] Per Bowen L.J., *re* Young and Harston cited in 31 ch. D. 174: cited in Stroud's Judicial Dictionary (p.2212).

[7] Per Russell J. in R. *v.* Senior cited in Stroud's Judicial Dictionary (p. 2246).

[8] Report of the Select Committee p. 21. Fort St. George Gazette Part IV dated 25—1—39.

[9] Sec. 9. See commentaries under Sec. 9.

Submission. Not only should the return be untrue but its submission must be wilful. If the submission of return is unintentional no offence is committed.

Fails to submit return as required by Act or rules. It is not clear whether the failure to submit a return has to be wilful[10] or whether every failure to submit a return, is punishable.

Clause (b) fails to pay tax within the time allowed. Note that the section punishes every failure to pay tax. As the section is worded, it does not appear that failure to pay tax should be wilful or intentional to make it punishable under this clause (b).

Clause (c) prevents or obstructs. Prevention or obstruction of an officer authorized which is in contravention of the terms of authorization under Section 14 is punishable. [See Section 14 (2) and (3).]

The terms prevention and obstruction are not synonymous. In the first place prevention does not mean only an obstruction by *physical* force but by other means as well. Secondly, the distinction seems to be with reference to the stage of interference by the accused. While inspection or entry may be prevented at the very start, there may be obstruction during entry or inspection.

The term obstruction has been used in Sections 184, 186, 188 and 225-B of the Penal Code and the decisions under those sections may offer some guide in interpreting the term "obstruction" in this Act[11]. The general principles deducible from the decisions with reference to the penal law of India, stripped of the trend of the law arising from the peculiar words used in the Penal Code, may be stated here. The term obstruction is used in the Penal Code as meaning hindrance or resistance or an obstacle[12].

Passive conduct, evasion, objection, annoyance. Constructive obstruction[13], or passive conduct by remaining within closed doors[14], or a mere withholding of assistance[15] may not amount to obstruction. To merely run away when an officer enters may not be obstruction[16]. Mere evasion is insufficient to show obstruction[17]. Similarly, obstruction has to be distinguished from mere objection or annoyance without using force or any threatening language. Mere objection or protest does not fall within the section[18] unless it verges on threat which is likely to be carried out immediately[19].

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[10] Cp. Interpreting the words "Wilful act, default or neglect......" Byles J. held that the word wilful has to be read only with act and not with default or neglect. (16 L.T. 93 *Squire* v. *Wheeler*).

[11] It must however be noted that the wording of the sections are different. For instance, section 186 I.P.C.speaks of voluntary obstruction.

[12] Gour's Penal Law of India. Vol. I. Page 705 (1st Edition).

[13] A.I.R. 1936 Pat. 74.

[14] 15 Mad. 221: A.I.R. 1925 Lah. 139.

[15] A.I.R. 1924 Lah. 238.

Threatening language. Threats may not amount to obstruction in all cases[19]. The point for determination in such cases is whether the act of the accused was such as to prevent the public servant from carrying out his duties. If the acts of accused caused a public servant to abstain from proceeding with the task entrusted to him[20], the offence of obstruction is made out. Where threats are combined with an attitude of an aggressive character, or where there is an exhibition of dangerous weapons by the accused, or where the threat is likely to be carried out immediately[19], the offence of obstruction may be held to be made out[20].

Indication of force needed. To constitute obstruction actual physical force is not necessary. If there is sufficient indication that force would be used if the officer persists in executing the work he is commissioned to do, it would be sufficient to constitute obstruction[21]. Even the use of abusive language against bidders as a consequence of which sale had to be postponed was held to be obstruction[22] under Section 184, I.P.C. If it is shown that fight would ensue if officer proceeds to execute his work it would be obstruction[23].

Physical obstruction. Deliberate placing of a cycle in front of a police constable and thereby preventing him from dealing with an offender was held to be obstruction under the Penal Code[24]. Similarly closing a house and thus preventing a policeman from removing stolen articles found in the room and threatening to kill him was held to be obstruction[25]. Again obstruction like jostling an officer was held to be an offence[26].

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16. 8 I.C. 823; 32 I.C. 663: 17 Cr.L.J. 71.

17. 38 All. 506: 35 I.C. 973: 17 Cr.L.J. 413 (under Sec. 225-B likelihood of fight if person is arrested to be shown).

18. 2 Bom. L.R. 541: A.I.R. 1932 Rang. 21: 38 All. 506.

19. A.I.R. 1928 Lah. 827.

20. A.I.R. 1932 Cal. 871.
A.I.R. 1933 All. 759.
A.I.R. 1938 All. 118.

21. A.I.R. 1937 Pat. 633. Decision under Sec. 186 I.P.C.

22. A.I.R. 1938 Nag. 529: 177 I.C. 819: 39 Cr. L.J. 954.

23. 38 All 506. Case under Sec. 225-B I.P.C.

But see 48 I.C. 832: 20 Cr. L.J. 64. A.I.R. 1923 Rang. 231 overt act held needed in case under Sec. 225-B.

See also A.I.R. 1925 Lah. 139. (Case under Sec. 188 I.P.C.)

24. A.I.R. 1936 Nag. 86: 162 I.C. 308: I.L.R. 1936 Nag. 50: A.I.R. 1928 Lah. 827.

25. A.I.R. 1924 Mad. 760: 20 L.W. 717: 1924 M.W.N. 438.

26. 30 I.C. 748: 16 Cr.L.J. 700.

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Person acting under public servant. Physical obstruction to a person who acts under the direction of a public servant was held to be an offence where the public servant was also present; for, the public servant in such cases must be held to be acting through his agent[27].

Obstruction by boy or idiot. If obstruction is by a boy of seven years it is no offence; for, under Section 82 I.P.C. nothing is an offence which is done by a boy under 7 years[28]. Similarly, the acts of an idiot or a lunatic would not be punishable; for, it is unreasonable to infer an intention to repeal the general principles of law embodied in the Penal Code relating to exceptions[29].

Inspection or entry. Mere prevention or obstruction is not punishable unless it is of inspection or entry. The power of inspection is under Section 14(2) and power of entry is under Section 14(3). A statutory power to inspect includes a right to take copies unless the right is negatived by express provision[30].

If the inspection or entry is in contravention of Section 14(2) or Section 14(3) obstruction or prevention of such inspection is not punishable unless the act of the officer falls under Section 99 I.P.C. If an officer acts wholly outside his jurisdiction obstruction to such officer is no offence[31].

Authorised. Only prevention or obstruction of an officer authorised under S. 14 is an offence. If there is no authorisation resistance or obstruction is not an offence[32]. Similarly, if the authorisation is defective, obstruction may not be an offence unless the act of the officer is within the four corners of Section 99 I.P.C. See below 33—36.

Should authorisation be shown. It is not necessary that a written authorisation under Section 14 (2) and (3) need be shown before an officer enters or inspects[37].

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27. A.I.R. 1928 Bom. 135: 52 Bom. 286 109: I.C. 353. But see contra. A.I.R. 1924 Lah. 238.

28. 1915 M.W.N. 543: 30 I.C. 154: 16 Cr.L.J. 602.

29. See Maxwell's Interpretation of Statutes 3rd edition p. 146.

30. Stroud's Judicial Dictionary p. 983.

31. 51 Bom. 896: A.I.R. 1927 Bom. 483.

32. 37 Cal. 122: 14 C.W.N. 282: 5 I.C. 409.

33. 48 M.L.J. 97: A.I.R. 1925 Mad. 613—Warrant by person not authorised—no offence.

34. 36 I.C. 871: 18 Cr.L.J. 39—Warrant not specifying date—no offence.

35. 37 Cal. 122: 11 Cr.L.J. 128; A.I.R. 1927 Oudh 91: 2 Luck. 40; 60 I.C. 334; 40 Cal. 849.
Time fixed expired—no offence.

36. A.I.R. 1928 Lah. 332: 9 Lah. 424: 107 I.C. 601.
Warrant not sealed.

37. 45 I.C. 833: 19 Cr.L.J. 641. (Authority need not be shown)

Contra

A.I.R. 1924 Mad. 555: 48 Mad. 442. (Warrant to be shown.)

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Illegal or irregular inspection or entry—right of private defence. Suppose in the course of inspection or entry which is unauthorised, force is used by accused and the officer acting under this Act is injured, does it amount to an offence ?[38]

Under Section 99. I.P.C. the acts of a public servant acting with jurisdiction in good faith and under colour of office but in erroneous exercise thereof, is protected and there is no right of private defence as against such acts. Thus, if there is mere *irregularity* in the act of the public servant, or if the authority of the public servant is *defective* in minor particulars, or if the officer exceeds his duty in minor particulars,[39] or if the public servant is acting in good faith and in the honest belief that he is entitled to so act[40] no right of private defence available. But Section 99 is wholly *inapplicable* to a case of an act of public servant done *without jurisdiction*[41] or to an act which is *ultravires*[42]. The general principle of law is that the terms of a penal Act should not be understood as applying to acts generally excusable or justifiable in law[43]. Thus, the right of private defence of person and property is open if the authority of the public servant is wholly defective or if there is no authority at all, or if the officer acts widely outside his duties[44] or where the warrant of authority is illegal[45]. On this principle, where the entry of a public servant was illegal, right of private defence was held available[46].

Clause (d) Fraudulently evades of payment of tax. The term 'fraudulently' has been defined in the Indian Penal Code. "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise"[47]. The term defraud means wrongfully withholding from another what is due to him. Wrongful withholding of tax due to the Government is a fraudulent act. The term "evasion" connotes the existence of some "artifice or trick or subterfuge," or device or stratagem on the part of the person evading payment of tax. The term 'evade' is used in penal statutes in a sense which suggests 'underhand dealing'[48].

Some of the decisions under the Penal Code[49] may offer some guidance in determining when a person acts fraudulently. An intention to defraud which is the very essence of a fraudulent act implies something more than mere deceit.

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[38] See Sec. 99 (I.P.C.)

[39] A.I.R. 1932 Pat. 315: 11 Pat. 713.

[40] A.I.R. 1927 Lah. 851.
A.I.R. 1937 M.W.N. 741.

[41] A.I.R. 1921 Cal. 959: 51 Cal. 902
A.I.R. 1921 Pat. 415.
A.I.R. 1926 Lah. 19: 6 Lah. 392

[42] 20 I.C. 992: 14 Cr.L.J. 512.

[43] Maxwell's Interpretation of Statutes 3rd Edition p. 145.

[44] A.I.R. 1932 Pat. 315: 20 I.C. 233: 14 Cr.L.J. 409.

[45] A.I.R. 1934 Mad 664 (2): 67 M.L.J. 510.

[46] A.I.R. 1926 Lah. 326: 7 Lah. 104. (Case under S. 99 I.P.C. with reference to act of Income-tax Officer) See also A.I.R. 1932 Pat. 66 (Case of illegal search).

[47] Sec. 25 I.P.C.

[48] Stroud's Judicial Dictionary p. 649.

[49] See Ss. 25. 206, 210, 415 to 417, Ss. 421 to 424, 463 and 465, 471, 477-A etc. (I.P.C.)

The advantage intended to be secured by the fraudulent act must be something which the party perpetrating the offence is not entitled legally or equitably[50]. There is a distinction between a dishonest and a fraudulent act[51]. Deceit, intention to deceive and in some cases, the existence of some kind of secrecy have been held to be the elements of a fraudulent act under Section 206, I.P.C. In the absence of the latter two elements the act may be dishonest but is not fraudulent[52]. An act done merely to hide one's neglect of duty is not a fraudulent act[53].

Mere nonpayment of tax is made punishable under Clause (b). But, to justify conviction under this clause Cl. (d), there must be some further circumstance showing that the assessee evades payment of tax and that too fraudulently. If a person shuts himself in a room with a view to avoid officers in search of him, he may be guilty under this section.

Tax is distinguishable from licence fees. Nonpayment of licence fee even if fraudulent cannot be a ground for prosecution under this clause. See commentary to clause (e) whether failure to pay license fee is punishable under that clause.

Clause (e) wilfully acts in contravention of this Act. See commentaries to clause (a) for meaning of term 'wilful'. It is not clear whether the term 'act' in this section includes illegal omission[54]. But it is a cardinal principle of criminal law that acts and illegal omissions stand very much on the same footing[55]. It is however well-settled that if inaction or omission is not illegal, it is not punishable[56]. Similarly, gross negligence is not an illegal omission and does not amount to an offence[57].

Presidency Magistrate or Magistrate of first class. In the hierarchy of criminal courts they have equal powers[58]. Local limits of the jurisdiction of Presidency Magistrates are set out in S. 20 Cr.P.C., while the first class Magistrate can exercise jurisdiction over areas as defined by the Local Government[59].

Place of enquiry or trial. See sections 177 to 183 I.P.C.

Procedure in prosecution. The person who is to initiate prosecution is not mentioned in the section and there is no provision analogous to Section 53 of the Income Tax Act which enacts that prosecution should be at the instance of the commissioner. Perhaps these matters would be dealt with by rules under Section 19 (k) and (l).

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[50] 28 I.C. 102.

[51] A.I.R. 1938 Pat. 165.
See Sec. 24 I.P.C. definition of 'dishonestly'.

[52] A.I.R. 1937 Mad. 713. See also A.I.R. 1936 Mad. 471.

[53] A.I.R. 1935 Rangoon 203.

[54] See Sec. 32 I.P.C. & Sec. 4 (2) Cr.P.C. Where act has been defined as including illegal omissions. Act including omission to act (95 I.C. 603).

[55] A.I.R. 1939 F.C. 43 at p. 55 Varadachariar. J.

[56] A.I.R. 1934 Lah. 813 Case under S. 32 Penal Code

[57] A.I.R. 1925 Sind 233.

[58] S. 32 Cr.P.C.

[59] S. 12 Cr.P.C.

Under Section 5(2) Cr.P.C. the procedure in prosecution under this Act is the one prescribed in the code of criminal procedure. Since the offence under S. 15 is punishable only with fine, the procedure is the one prescribed for summons cases in the code of Criminal Procedure[60].

Fine. The Magistrate cannot impose imprisonment. He can only pass a sentence of fine on accused.

Continuing breach. Continuance of same offence is distinguishable from the commission of a fresh offence. The imposition of prospective fines for breaches is illegal[61]. For the offence of continuing breach, a second prosecution and conviction is necessary[62]. The accused must be given a fresh opportunity to defend himself.

Subsequent breach. For every day of breach after the first breach the accused person can be convicted and sentenced to pay a fine of Rs. 50 as fine.

Recovery of fine. Sec. 64 I.P.C. which enables a Magistrate to award imprisonment in default of payment of fine has been extended to offences under special and local laws by reason of Section 40 I.P.C[63]. The Madras General Sales Tax Act is a local law[64] and fine imposed under Section 15 of this Act can be recovered by award of imprisonment in default.

Further, by reason of Section 19 of the Madras General Clauses Act the provisions of Sections 63, 68, 69, 70, I.P.C. apply to all fines imposed under the authority of the General Sales Tax Act as well[65]. Section 386 Cr.P.C. provides for the issue of warrants for the recovery of fines. But it is not clear, whether this provision applies to fines under this Act, regard being had to the wording of Section 19 of Madras General Clauses Act which makes no provision applying the provisions of Cr.P.C. in this respect[66].

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[60] See Ss. 241 to 250 Cr.P.C. The special features of summons case procedure are these:

1. Accused is brought and substance of accusation is stated.
2. If accused admits he is convicted.
3. If he does not admit, complainant is examined and evidence on behalf of accused is taken.
4. After evidence, accused is either convicted or acquitted.

See following Cases under Municipal and other similar Acts:—

[61] 16 Mad. 230,
27 Cal. 565
37 Cal. 671
A.I.R.1932 Nag. 116
55 All.603: A.I.R. 1933 All. 657.
14 Pat.455:A.I.R. 1935 Pat. 208.

[62] 58 Mad.513: A.I.R. 1935 Mad. 56; A.I.R. 1929 Sind 52(1).

[63] See 18 Mad. 49

[64] Sec. 42 I.P.C.

Applicability of provisions of Penal Code. The question may arise whether, in view of Section 15 the provisions of the Penal Code would also apply. The general principle of law is that the Penal Code would apply if acts fall within the statute though there may be specific offences and penalties in the special Act[67]. But, if an act is an offence under both the general and the special law, a person cannot be convicted under both the enactments but only under one of them and preferably under the latter enactment[67]. Therefore, it seems that, since officers appointed under this Act are public servants under Section 21 (Clauses 9 and 10) I.P.C. the provisions of Chapters IX and X. I.P.C. relating to "offences by or relating to Public Servants" and "contempts of lawful authority of Public Servants" would apply[68].

Proceedings under Sections 195 and 476 Cr.P.C. Under Section 19(h) rules can be framed by the Provincial Government for compelling production of documents and for enforcing attendance of witnesses and for examining them on oath or affirmation. The authorities constituted under this Act seem to be courts at least when they receive evidence[69].

It was held in a case decided by the Nagpur High Court that the Income Tax Officer is a Revenue Court and that an assessee producing and relying on false accounts can be prosecuted under Sections 193 and 196 I.P.C[70]. On the principle of this ruling an assessee relying on false accounts can be proceeded against under Sections 193 and 196 I.P.C.

Appeal and revision. Against any sentence of fine passed by a first class Magistrate appeal lies to the Court of Session if the fine exceeds Rs. 50[71]. Against a sentence passed by a

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[65] Sec. 68 provides that imprisonment should terminate on payment of fine.

Sec. 69 provides for termination of imprisonment upon payment of proportionate part of fines.

Sec. 70 provides that fine is leviable within 6 years or during imprisonment.

[66] See Sec. 224 Madras Local Boards Act which expressly makes fine recoverable under the provisions of Cr.P.C.

[67] See 6 Mad. 249: 6 L.W. 283. (Offence under I.P.C and Pro. Ins. Act).

52 Mad. 79 (offence under Local Boards Act and I.P.C.)

A.I.R. 1932 All. 69 conviction under I.P.C. though facts fall within Motor Vehicles Act.

A.I.R. 1932 All. 18—Abetment of offence under also Salt Act.

Contra 22 Cal. 131 at p. 139.

[68] See Ss. 161—171.
Ss. 172—190.

[69] See 36 Madras 72. Divisional Officer hearing appeal under Income Tax Act held to be court. See also A.I.R. 1935 Mad. 673. But See A.I.R. 1930 Mad. 209. Officer assessing Income Tax not court.

[70] 20. N.L.J. 214.

[71] Sec. 408 to 413 Cr.P.C.

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Presidency Magistrate appeal lies to the High Court, only if the fine exceeds Rs. 200[72]. Appeal against acquittal lies only to the High Court[73]. Application for revision lies to the High Court, or the Sessions Judge or the District Magistrate[74] and the revisional power is very wide. But in cases where an appeal lies, but is not preferred an application for revision to the High Court is unsustainable[75]. Where an appeal does not lie revision is sustainable, as in a case where a Presidency Magistrate or a Magistrate of the first class imposes a sentence which is not appealable. The ultimate power to reverse a sentence lies in the High Court and the District Magistrate or the Sessions Judge can only make a report to the High Court[76].

SECTION 16

Prescribed authority. The authority that has to accept composition of offences would be prescribed by rules (Section 19).

Committed or reasonably suspected. Composition need not necessarily be with one who has committed an offence but any person who is reasonably suspected to have committed an offence can compound the offence of which he is charged.

Composition. Composition differs from withdrawal. The latter is the act of one party, the complainant, while the former is the result of an arrangement between both the parties—the complainant and the accused. A Magistrate cannot decline to recognise composition and proceed with trial[77]. The effect of compounding or composing an offence under Section 15 is the acquittal of the accused[78] and the Magistrate cannot convict the accused. The Magistrate has only to record a judgment of acquittal.

When an offence can be compounded. Since an offence falling under Section 15 is complete when the acts constituting it are complete, and since the offence can be compounded without the permission of the court, composition can be effected even before the case comes before court or before a prosecution is instituted[79]. A case can be compounded at any time before judgment is pronounced[80]. In the appellate court, when an appeal is pending against conviction, no composition can be effected without the leave of the court and before the appeal is heard.[81] Similarly, composition in the High Court as a court of revision is dependent on the permission of the High Court[82].

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[72] Sec. 411 Cr.P.C.

[73] Sec. 417 Cr. P.C.

[74] Ss. 435, 436, 438 and 439 Cr.P.C.

[75] Sec. 439(4) Cr.P.C.

[76] Ss. 438 and 439 Cr.P.C.

[77] A.I.R. 1931 Lah. 402 (1). See also 10 Pat. L.T. 840.

[78] 45 All. 145. See also Sec. 345 (6) Cr.P.C.

[79] 41 Mad. 685.
See A.I.R. 1937 Mad. 825, case relating to non-compoundable offence.

[80] 45 Cal. 816.

[81] 345 (5) Cr.P.C.

[82] Sec. 345 (5A) Cr.P.C.

Form of composition. No particular form is needed to compose an offence. Even a letter intimating withdrawal of complaint was construed in the undermentioned case as a composition of offence[83].

Proof of composition. When the fact of composition is denied, the Magistrate must record evidence in proof of composition. The burden of proof is on the accused[84].

Suit for damages. The effect of composition would be also to bar a civil suit for damages on the facts constituting the offence[85].

Amount for composition. The amount to be received by the prescribed authority is to be according to discretion of the authority subject to the limits set out in the section.

ACTIONS IN COURTS AND LIMITATION[1].

SECTIONS 17 & 18.

GENERAL NOTE.

These sections relate to actions against the Government (Crown) and against officers acting under this Act even as Sections 15 and 16 deal with actions against assessees and licensees under this Act[2].

17.

Bar of certain proceedings.

(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Provincial Government, for any act done or purporting to be done under this Act, without the previous sanction of the Provincial Government.

(2) No officer or servant of the Provincial Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

18.

Limitation for certain suits and prosecutions.

No suit shall be instituted against the Crown and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Provincial Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

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[83] 45 All. 145: A.I.R. 1923 All. 474.

[84] 39 Mad. 916; 41 Mad. 685; A.I.R. 1932 Sind 7.

[85] A.I.R. 1933 Bom. 413 14 Cr.L.J. 392.

[1] Title is inserted for convenience. It does not find a place in the Act.

[2] Cp. Sec. 270 Government of India Act 1935.

See also Sec. 197 Cr.P.C. Sec. 67 Income Tax Act, Sec. 227(a) Madras Local Boards Act., etc.

Summary and comments. Actions are of two kinds (1) Suit against the Crown and (2) actions against officers or servants of the Provincial Government. A suit against the Crown has to be instituted within a period of six months from the date of the act complained of. Actions against officers and servants fall into two categories viz., (a) actions for anything done or purporting to be done under this Act and (b) actions for anything which neither is done, nor purports to be done under this Act. So far as the latter kind of action is concerned, it is not covered by the bar under section 17 of this Act nor by the rule of limitation set out in section 18 and the ordinary rule of limitation applies. But the former kind of action is subject to certain conditions. Firstly, the previous sanction of the Provincial Government is required. Secondly, the proceeding must be instituted within six months from the date of act complained of. So far as liability is concerned, in the case of all actions, the officer or servant is not liable, if the act is done in good faith, in the course of the execution of duties or in the discharge of functions imposed by or under this Act.

Suit, prosecution or other proceeding. The words used are very comprehensive and include all proceedings in a civil or criminal court.

Some of the conceivable actions can be stated here:

1. Special proceedings in the High Court
    - (a) Writ of certiorari to quash proceedings before authorities in this Act.
    - (b) Writ of Mandamus—directing officers to do their duties.
2. Revisional proceedings in the High Court.
3. Other civil proceedings.
    - (a) Suit contesting validity of tax or fee levied and recovery of tax or fee.
    - (b) Suits relating to licences, like refusal to grant licence etc.
    - (c) Injunction suits restraining officers from proceeding with the levy of tax or collection of tax, etc., or suits for injunction restraining prosecution.
    - (d) Actions in torts for any act done by officers or servants illegally or maliciously, including a suit for damages for malicious prosecution.
4. Criminal proceedings against officers and servants.

How far are these actions barred by the present Act? See below.

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Proceedings in the High Court. Proceedings in the nature of a writ of certiorari are barred by reason of the Government of India Act which bars the original jurisdiction of the High Court in revenue matters[3]. But to ask a revenue officer or the Board of Revenue to do the statutory duty vested by law is not a matter concerning revenue, and a writ of mandamus (under Section 45 of Specific Relief Act) is sustainable in the High Court[4]. An application for revision either against the order of the Board of Revenue under Section 12 or against the proceedings or orders of officers under this Act is unsustainable. It has been held that the Board of Revenue acting under Section 172 of the Madras Estates Land Act is not a civil court and an application either under Section 115 C.P.C. or under Section 107 of Government of India Act (1919) is not maintainable[5].

Proceedings in Civil Courts. Generally, civil courts have jurisdiction to entertain all suits of a civil nature "excepting suits of which their cognizance is expressly or impliedly barred[6]. The question of the jurisdiction of Civil courts has to be examined with reference to two aspects viz., the rule of implied bar and the rule of express bar. The rule of implied bar may apply by reason of the constitution of separate tribunals under this Act[7]. The rule has been clearly and succinctly stated in Chitaley's Code of Civil Procedure[8]. "Where a special tribunal or a public body is created by or under the authority of an Act of Legislature for determining questions which are the creation of the Act, the jurisdiction of that tribunal or body is exclusive and civil courts cannot take cognizance of such matters. Where the tribunal has acted within its jurisdiction, the jurisdiction of the Civil Court is barred in the absence of *malafides* or fraud. Where however, the tribunal acts *ultra vires*, or refuses to exercise its jurisdiction or acts *malafide* or arbitrarily, the Civil Court has power to interfere and set matters right"[9]. Even if a tribunal having jurisdiction to decide a matter, for example a question whether a person is a resident of British India and is assessable to tax, decides wrongly no action is maintainable in the Civil Court to quash the decision except as provided in the statute[10]. For instances of interference by the Civil Court. See below[11].

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[3] A.I.R. 1936 Mad. 398 : 70 M.L.J. 343 : 59 Mad. 702 Case under Section 106(2) of Government of India Act of 1919 with reference to collection of Income-tax. Corresponding section in the Government of India Act of 1935 is Sec. 226(1).

4 M.I.A. 353 : 6 Moore P.C. 257.

See also A.I.R. 1927 Mad. 689: 50 Mad. 449; A.I.R. 1930 Mad. 896; 36 Mad. 72.

[4] 47 Bom. 742: 45 M.L.J. 592 (P.C.) (Decision under Income tax Act of 1918).

In the Income Tax Act of 1918 remedy of aggrieved party was very limited. Under the present Income Tax Act the right to apply under Sec. 45 of the Specific Relief Act is held to be barred as there is other remedy open under Sec. 66 of the Income Tax Act by reference to the High Court. (See A.I.R. 1934 Bom. 62; A.I.R. 1934 Rang. 132, etc., decisions under the present Income Tax Act.)

The Madras General Sales Tax Act limits the remedy of aggrieved party and there is not even a provision for referring the case to the High Court. The decision in 47 Bom. 742 is, it is submitted, fully applicable to cases under this Act.

[5] A.I.R. 1932 Mad. 612: 55 Mad. 883.

See also A.I.R. 1928 Mad. 1032.

[6] Sec. 9 C.P. Code.

[7] Ss. 11 and 12.

[8] Chitaley's C.P.C. 2nd Edition Volume I page 100,

Action against crown and officers—limits of. So far as the express bar of jurisdiction is concerned, an action against the Crown cannot be brought unless the suit is filed within six months from the date of the act complained of. (Section 18). So far as suits or proceedings against officers and servants are concerned, if they relate to acts done or purporting to be done under this Act sanction of the Provincial Government is needed, and the action has to be brought within six months from the date of the act complained of. In other cases the ordinary rule of limitation applies. In all cases the liability of officer or servant does not arise in respect of anything "done in good faith, in the course of execution of duties or the discharge of functions imposed by or under this Act'. [Section 17(2).]

The maintainability of the various classes of suits stated above has to be considered with reference to the rules set forth above.

Some additional considerations in respect of the various classes of suits may be stated here.

Suit contesting validity of tax and recovery of tax illegally collected. Unlike the Income Tax Act,[12] there is no express prohibition against an agitation of the validity of tax in a Civil Court. But the rule of implied bar applies and a suit will not lie against the Provincial Government unless the levy of tax is *ultra vires*[13] or unless the tribunal has acted without jurisdiction, or in a malicious way[14]. But having jurisdiction to decide a question if an officer has decided wrongly that a person is assessable, the decision is not open to challenge in the civil court[15].

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[9] Powers of special tribunals and immunity from civil suits. See A.I.R. 1937 Mad. 241; 20 N.L.J. 145, A.I.R. 1933 Nag. 193 (F.B.)

[10] A.I.R. 1937 Mad. 241; A.I.R. 1928 Rang. 70 : 5 Rang. 825.

[11] *See the following cases under the Income Tax Act.*

A.I.R. 1929 Mad. 179; A.I.R. 1932 Sind 48 ; A.I.R. 1933 Rang. 229 ; A.I.R. 1926 Bom. 50. See also 24 Mad. 205 Case under Municipal Act.

[12] Sec. 67 of Income Tax Act. See also Sec. 228 Mad. Local Boards Act and Sec. 364 of Mad. District Municipalities Act.

[13] A.I.R. 1926 Bom. 50.

[14] *See the following cases under the Income Tax Act.*

A.I.R. 1932 Sind 48 ; A.I.R. 1929 Mad. 179 ; (assessment of income outside Act—Civil suit held sustainable). See also A.I.R. 1925 Sind 130; A.I.R. 1925 Sind 67 24 Mad. 205—tax illegally levied by Municipality. A.I.R. 1936 Lah. 972. A.I.R. 1935 Mad. 298(2) Decisions under Municipal and Local Boards Acts.

The view has been taken in a case decided by the Allahabad High Court that a suit for declaration that an assessment of tax is illegal, is a matter relating to taxation between the Government and the subject and not a right of a civil nature arising between one subject and another subject and that the suit consequently not entertainable in the Municipal courts[16].

The above considerations equally apply to levy of fee by the Provincial Government.

Suits relating to licences. Suits directing the Government to grant licence or suits to declare cancellation of licence to be *ultra vires*, or suits for declaration that a levy of fee is *ultra vires* may arise for consideration before courts. Courts will decline to interfere with the discretion vested with the Government[17] and its officers unless the levy is *ultra vires* or the act of Government in cancelling a licence or imposing fee is arbitrary, fraudulent or is due to improper motives[18].

Injunction suits. In view of section 56(d) of the Specific Relief Act which prohibits the issue of injunction interfering with the public duties of any department of the Government, courts will not issue injunction restraining the authorities acting under this Act. "Where an act is by express enactment or otherwise, one that may be legally done by that department, it is not for the court to control the exercise......of its discretion"[19].

Similarly in view of Section 56(e) of the specific Relief Act, courts will not issue an order of injunction restraining criminal courts from proceeding with prosecutions in their courts under Section 16 of this Act[20].

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[15] A.I.R. 1937 Mad. 241.
42 Cal. 151.
A.I.R. 1922 Pat. 361.

[16] A.I.R. 1936 All. 117: 159 I.C. 897.
See also 1 Cal. 11 at page 26.

This is an extreme view which is not shared by several High Courts. For instances of interference in cases of illegality of taxation, see F.N. 14 and cases cited there.

[17] 48 M.L.J. 132 Licence—Refusal by President.

[18] A.I.R. 1931 Mad. 497 Licence fee held *ultra vires* since it was intended to contribute to the revenues of Municipality and it was not commensurate with cost incurred,

See also A.I.R. 1933 Mad. 148;
A.I.R. 1931 P.C. 217;
1932 M.W.N. 873.

Read observations of Cairns L.C. in (1880) 5 A.C. 214 and 44 L.W. 904 at P. 912.

[19] Collett's Specific Relief Act. (P. 446).

See the following cases relating to Municipalities and Local Boards :—
3 Mad. 201; 19 Bom. 212; 31 Mad. 117; 22 Bom. 230.

[20] A.I.R. 1929 Mad. 345; A.I.R. 1928 Cal. 464. (Injunction against Municipality not granted.)

Actions in torts. No action can lie either against the Crown or against the officers of the Crown for anything done under this Act which is within the law. The liability of the Crown has been already considered. (See pages 73 to 75.)

In the case of the acts of servants and officers which are beyond the purview of the statute, the initiation of proceedings would involve some difficulty. If the act of the officer or servant was done or was purported to be done under this Act sanction of the Provincial Government would be needed. If the act of the officer was neither done nor purported to be done under this Act, sanction would not be necessary[21].

But an officer or servant is not responsible for damages, if the act was done "in good faith or in the course of execution of duties or the discharge of function imposed by or under this Act"[22].

Thus, in a suit for malicious prosecution against an officer or servant, besides the other elements needed to hold a person liable in such action[23] absence of good faith would be needed if the claim is to be sustained.

In certain cases, the government may be liable for the tortious acts of its servants. "The Government can be sued if it has expressly authorised or ratified a wrong done by its officers"[24]. Otherwise the Government is not responsible for the acts of misfeasance or negligence or omission of its subordinates and for acts done by officers in the exercise of their discretion[25].

One of the remedies for a tort being injunction, "officers of the Government may be restrained from a wrongful act in the shape of a tort done under the plea of the command of the Government"[26]. But this remedy is very rarely available, for there are appellate and revisional tribunals constituted under this Act having jurisdiction to effectively control the acts of the subordinate officers of the Government.

Prosecution of officers or servants. Prosecutions are criminal actions against officers and servants. Nothing done within the four corners of this Act is an offence. Thus, a person entering an assessee's premises is not liable to be prosecuted for trespass. If however, the act is beyond the powers conferred by this Act sanction for prosecution would be needed, if the officer has purported to act under this Act. Otherwise no sanction would be needed. In any case the officer or servant is not liable if his act falls within Section 17 (2). (See also commentaries under the heading 'Actions in torts.')

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[21] Municipal chairman being aware of absence of authority intentionally and maliciously prosecuting a person Notice held not necessary under Sec. 350 Dt. Municipalities' Act. A.I.R.1936 Mad. 547: 59 Mad.887

[22] Sec. 17(2).

[23] Prosecution by defendant—termination of prosecution in plaintiff's favour, defendant acting without reasonable & probable cause, defendant having been actuated by malice.

[24] Ramaswami Iyer's Law of Torts page 483.

[25] A.I.R. 1933 Rang. 113.

See also A.I.R. 1931 Rang. 294: 9 Rang, 375; 51 M.L.J. 446.

[26] Collett's Specific Relief Act 3rd Edition page 446.

Sanction and limitation. Both the need for sanction and the period of limitation of six months in respect of one kind of action (i.e., action against an officer or servant of the Provincial Government when such act is done or purporting to be done under this Act) are co-extensive.

If the action is against the officer or servant in respect of any act, which is neither done nor purported to be done under this Act, no sanction is needed, and the rule of limitation is governed by the ordinary law set out in the limitation Act[27]. For instance, refund of tax illegally collected may be governed by the 3 years rule of limitation under Art. 62 of the Limitation Act[28] if the suit is otherwise maintainable (e.g., where the act is *ultravires*).

Need for sanction—stage of determination. The condition precedent to the initiation of a proceeding falling under Section 17 of this Act, is the sanction of the Provincial Government. The necessity for such sanction cannot be made to depend upon the case which the officer may put forward at the time of defence, but must be determined at the time of initiation of the proceeding. When a proceeding is instituted, the court must see with reference to the allegations made against the public servant, whether they relate to anything done or purporting to be done under this Act. If they do relate to such acts, the proceedings would be void in the absence of sanction. If the allegations do not relate to acts purported to be done under this Act, *prima facie* no sanction would be needed. If however, in the latter case it is established that the acts were done or purported to be done in the execution of duty, the proceedings would fail for want of sanction[29].

Previous sanction. The section (Sec. 17) requires previous sanction. Therefore sanction obtained after the commencement of proceedings is not sufficient[30].

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[27] 52 Mad. 207 : 56 M.L.J. 525. Decision under Sec. 350 Dt. Municipalities Act. Suit not held governed by the section both for limitation and need for notice.

A.I.R. 1936 Mad. 945 : 44 L.W. 700. Decision under Sec. 225 of Local Boards Act-principle being as above.

See also A.I.R. 1936 Mad. 547 : 59 Mad. 887. Malicious prosecution by chairman not purporting to be done under Act—no notice needed.

[28] A.I.R. 1932 M.W.N. 1089—Refund of profession tax illegally collected.

But see A.I.R. 1933 Mad. 791.

[29] A.I.R. 1939 F.C. 43 at page 55.

[30] *See Following cases under Sec. 197 Cr.P.C.* 42 Bom. 172 ; A.I.R. 1923 Mad. 338 ; A.I.R. 1933 Sind 161.

Absence of sanction—effect. In the absence of sanction the proceedings are void[31].

Requisites of sanction. No particular form is needed for granting sanction[32]. But the offence in respect of which a person is to be prosecuted should be stated[33]. Sanction need not be addressed to the court[34].

Suit against the crown. The wording of section 18 is rather ambiguous. It is not clear whether Section 18 sets out a rule of limitation as to suits against the Crown or whether it prohibits absolutely a suit against the Crown. The former construction seems to be preferable for two reasons. Firstly, the marginal heading[35] shows that the section deals with the period of limitation in certain specific suits. Secondly the right of suit against the Provincial Government expressly preserved in Section 176 Government of India Act (1935)[36] cannot be abrogated by any Act of the Provincial Legislature[37] (Section 108, Government of India Act, 1935). The reason is this. The tradition of British Jurisprudence is to place the Crown also within the Law. "No member of the executive can interfere, with the liberty of or property of a British subject except on condition that he can support the legality of his action before a court of justice". As between the Crown and its subjects there cannot be any such thing as an act of state[38].

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[31] *See following cases under Cr.P.C.* 42 Bom. 172; 1920 M.W.N. 7.

See also A.I.R. 1931 Cal. 646; 51 All. 377: A.I.R. 1928 All. 756.

[32] 7 M.H.C.R. 58: 27 Mad. 54.

[33] 16 Mad. 468: 17 Cr. L.J. 168.

[34] 39 Bom. L.R. 1056.

See also A.I.R. 1933 All. 543: 55 All. 878.

[35] Marginal heading can be referred to. See 'Introduction'

[36] Section 176 of Government of India Act 1935 preserves the right of suit against the Provincial Government in all cases in which such right was available against the Secretary of State and under the law as it existed prior to the present Government of India Act, the right of suit against the Secretary of State was available in all cases, where such remedy was available against the East India Company (Section 32 of Act of 1915 and Sec. 65 of Act of 1858). The Rangoon High Court has held in a case reported in A.I.R. 1929 Rang. 70 that such right of suit against the Secretary of State is not available, since no such right against the East India Company in respect of revenue paid was available in the past and relies on the absence of any instance of action against the East India Company. But the correct view seems to be to hold that action against the Provincial Government lies, if the act of the Government concerning revenue is without jurisdiction or is *ultra vires*. (See commentary under the heading "Suit contesting validity of tax.")

[37] 40 Cal. 391 (P.C.) Prohibition of right of suit against Government held *ultra vires*.

[38] A.I.R. 1931 P.C. 248: 61 M.L.J. 975: 1931 M.W.N. 683. For suits against Secretary of State see 28 Mad. 213—Case under Post Office Act.

Procedure in suit against crown. Under Section 79, C.P.C. when the Provincial Government is sued as representing the Crown, the Government must be sued as the 'province.' Under Section 80, C.P. Code a notice must be sent to the Secretary to the Provincial Government or the Collector of the District, and no suit can be brought until the expiration of two months next after the notice is served. The notice must state the "cause of action, the name, description and place of residence of the plaintiff and the relief which he (plaintiff) claims."

Object of Section 17 and its construction. The object of section 17 is to protect the act of a person which may not be legal but is nevertheless one purported to be done under the Act. If a person *bona fide* believes he is acting under a statute, he is entitled to protection, provided he does not absurdly believe so[39]. When a person acts well within a statute he is not liable in any court of law and no protection is needed. But, when he purports to act under a statute, protection is needed so as to give him some latitude in his acts in the discharge of the statutory duties imposed on him. The section should not however be construed so as to unduly restrict the right of a citizen[40]. The section (Section 17) is no doubt intended to give some measure of protection to the public servant. But since the initiation of both criminal and civil proceedings is affected, "the Legislature must be presumed to have been very cautious in depriving the aggrieved citizens of redress in a court of law, and restrictions on such a remedy imposed in the interest of the public servant should not be extended so as to unduly restrict the remedy of the citizen"[40].

Done or purporting to be done. It is difficult to determine when a person purports to act under the statutory power vested in him. Three views are possible.

(i) The extreme view that all acts of a public servant are protected is incorrect[41]. This section (Section 17) bears a close resemblance to Section 270 of the Government of India Act of 1935. Like Section 270 of the Government of India Act and Section 197 Cr.P.C. this Section would apply only to acts done in an *official* capacity[42]

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[39] 4 M.I.A. 353.

[40] A.I.R. 1939 F.C. 43 at page 57 decision under Section 270 Government of India Act.

[41] Read the commentaries of Chitaley and Annaji Rao on Sec. 197 Cr.P.C. in (Volume I, pp. 1089 to 1096.)

[42] A.I.R. 1935 Mad. 319 : 41 L.W. 668—Act of Magistrate in official capacity—sanction needed.

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and not to acts done in a *private* capacity." A person that does not pretend to act in an official capacity must be held to act in a private capacity. If an officer does not pretend to act in his official capacity, he does not get the benefit of section 17[43], for he cannot be held to purport to act in his official capacity. If however, an officer pretends to act in his official capacity though in dereliction of the duty cast on him[44] the exemption would apply. If an officer insults or abuses an assessee in a street when he does not purport to act in his official capacity, he must be held to act in his private capacity and sanction may not be needed[45]. The question whether an offence is committed in an official capacity or not is one of fact to be determined with reference to the act complained of and the attendant circumstances of the case[46].

(ii) Equally incorrect is the other extreme view that the act complained of should be strictly within the scope of authority. The reason is this. An act which is completely within the scope of one's official duties can never be an offence, and there would be no need to apply the provisions of this Section[47].

(iii) The correct view seems to be to hold that the applicability of the section lies midway between these two extreme views. The section covers an offence committed in the course of an action which is taken or is purported to be taken in compliance with an official duty[48]. An act cannot purport to be done in execution of duty "unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting"[48]. Various tests can be applied in determining whether an act is purported to be done under this Act. The correct test is with reference to the *nature of the act* complained of[49]. If the act is one which has connection with the acts which the official is doing in the execution of his duties the exemption under the section would apply[49]. But, if acts done are such as are not usually done by him in the discharge of his official duties, no sanction would be needed[49]. A test usually applied in such cases, is with reference to the *character* of the offender at the time when the complained act is done[50]. But this test is not quite correct. A person may be an officer at the time when an offence is committed but still he may not purport to act in execution of his duties, and he may not be entitled to exemption[51]. Similarly, it is not a proper test to find whether the offence is one capable of being committed by an *officer* only. A third incorrect test is to find whether the act is done in *good faith*. An act may not be done in good faith and in fact might be done negligently or maliciously or even dishonestly, but the act may nevertheless be purported to be done under this Act. To find whether sanction is needed under Section 17, the question of good faith is relevant only at the time of

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[43] *Person not pretending to act in official capacity :—*

For example, a case where a public servant accepts bribe, or where a doctor commits rape on patient or where a public servant simply embezzles some property entrusted.

A.I.R. 1939 F.C. 43 at p. 52, 56 see also following cases under sec. 197 Cr.P.C.

4 L.W. 556.

A.I.R. 1927 Mad. 566.

[44] *Person pretending to act but in dereliction of duty :—*For example a case where a public servant entrusted with the task of maintaining a register falsifies it A.I.R. 1939 F.C. 43 at p. 53.

[45] 4. L.W. 556—Chairman abusing person in public street.

[46] A.I.R. 1939 F.C. 43 at page 56.
A.I.R. 1935 Pat. 52.
8 Lah. 617 : A.I.R. 1928 Lah. 72.

[47] 49 L.W. 781.
A.I.R. 1939 F.C. 43 at page 51

[48] A.I.R. 1939 F.C. 43 at pages 51 and 52.

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[49] A.I.R. 1939 F.C. 43 at page 57.
A.I.R. 1932 Mad. 214: 62 M.L.J. 223

Village Munsif—sanction held necessary for certain offences but not for certain other offences.

See following cases :—

***Sanction held not necessary*:**

1916 M.W.N. 384. Breach of trust by Municipal Chairman.

A.I.R. 1927 Mad. 566 : 50 Mad. 754.
A.I.R. 1923 Mad. 475 : 47 Mad 585
President threatening voters.

A.I.R. 1935 Cal. 176—Officer beating person.

***Sanction held necessary*:**

A.I.R. 1935 Mad. 213 : 58 Mad. 746. Cancellation of tender by chairman—suit for damages.

[50] 49 L.W. 781.
See also 52 Mad. 659 : A.I.R. 1929 Mad. 659 ; A.I.R. 1937 Nag. 293.
Cases under Section 197 Cr.P.C.

[51] For example, in a case where a doctor steals the jewels of a patient. Though with reference to Section 197 Cr.P.C. the rulings in F.N. 50 may be correct, the wording of Section 270 of the Government of India Act and Section 17 of this Act are slightly different and the rulings are inapplicable.
See A.I.R. 1939 F.C. 43 at page 56.

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determining the liability of the officer acting under this Act[52]. Lastly, it is not necessary that the act complained of should be inseparably connected with the official duties[53].

(iv) If a person has two offices one of which falls within this Act, while the other is outside the purview of this Act, need for sanction would arise only in the case of an act done or purported to be done by the person in his capacity as one holding an office under this Act. If an act is done in his capacity which is independent of this Act, no sanction would be needed[54].

Suit prosecution............instituted. A suit is instituted by the presentation of a plaint[55] while a prosecution or criminal proceeding is initiated by a complaint or upon a report by police[56].

Place of inquiry or trial in Criminal Courts. See Chap. XV Cr.P.C.

Place where suits to be filed. See C.P. Code. Ss. 15 to 20.

Within six months from..............act complained. The period has to be reckoned from the date of the act complained of after excluding the day on which the act complained of happened[57].

Extension of time. The present Act is a special Act, an Act taxing turnovers only, and a local Act, an Act applicable only to the Madras Province within the meaning of Section 29 of the Limitation Act. Therefore Sections 4, 9 to 18, and 22 of the Limitation Act would apply in computing the period of limitation. Further, Section 10 of the Madras General Clauses Act may apply.

The practical effect of the application of the provisions of the Limitation Act as also of Section 10 of the Madras General Clauses Act is, in the first place, to permit an assessee to institute

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[52] A.I.R. 1939 F.C. 43 at pp. 51 and 58. Case under Section 270 of Government of India Act.

See also 41 Mad. 792 (case under Section 80 C.P.C.) 50 Cal. 992. (Case under 197 Cr.P.C.)

But see A.I.R. 1936 Mad. 547.

[53] A.I.R. 1939 F.C. 43 at page 51.

[54] A.I.R. 1931 Mad. 492—Headman acting as subordinate of revenue department—offence committed—no sanction needed act not being as member of Panchayat Court.

A.I.R. 1933 M.W.N. 876—False report by Headman—act not as Munsif—no sanction needed.

[55] Order 4 Rule I, C.P. Code.

[56] Sec. 190 Cr.P.C.

[57] Sec. 9(b) of Madras General Clauses Act.

By reason of Sec. 29(2)(a) of Limitation Act, Sec. 12 (I) of Limitation Act would also apply to the present enactment and the day on which the complained act happened has to be excluded. (See also commentary under Section 11).

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a proceeding on Monday if the period of limitation prescribed in this Act expires on Sunday and secondly, if the period of limitation expires when courts are closed, the proceeding can be instituted on the day of reopening of the court. Similarly, in computing the period of limitation, if there is fraud within the meaning of Section 18 of the Limitation Act, the benefit of the section would be available[57].

In good faith. A thing cannot be said to be done in good faith if it is not done with due care and caution[58]. It is not sufficient for the public servant to show that he had a good intention. He must show that he exercised such care and skill in the execution of his duties as would be reasonably necessary[59]. But if an officer does an act which he does not believe to be necessary in the circumstances, the act cannot be said to be done in good faith[60]. It is doubtful whether mere non-compliance with the provisions of law would be evidence of absence of good faith[61]. The question of good faith is relevant only at the stage in which Section 17 (2) applies[62]. The question is to be decided at the time of trial and it is irrelevant for determining whether sanction is needed or not under Section 17 (1)[62].

RULES (SEC. 19).

GENERAL NOTE

This section confers power on the Provincial Government to make rules. Sub-section (1) sets out the general purpose of the rules. Sub-section (2) sets out the various matters in respect of which particularly, rules may be framed. Sub-section (3) makes breach of rules punishable while Sub-sections (4) and (5) set out certain conditions before the rules come into operation.

19. Power to make rules.

(1) The Provincial Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) all matters expressly required or allowed by this Act to be prescribed;

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[58] (1911) 2 M.W.N. 479: 12 I.C. 654: 12 Cr.L.J. 566.

Sec. 3(11) of Madras General Clauses Act.

Sec. 52 I.P.C.

Sec. 2(7) Limitation Act.

See also Sec. 499 Explanation (9) I.P.C.

See also Sec. 53 Provincial Insolvency Act.

[59] A.I.R. 1934 Oudh 124: 9 Luck. 517:

[60] 21 Mad. 249.

[61] A.I.R. 1932 Pat. 66: 10 Pat. 821:

[62] A.I.R. 1939 F.C. 43 at pp. 51 and 55.

(*b*) the licensing of persons engaged in the sale of goods and the imposing of conditions in respect of the same for the purpose of enforcing the provisions of this Act and fees for licences;

(*c*) the assessment to tax under this Act of businesses which are discontinued or the ownership of which has changed;

(*d*) the assessment to tax under this Act of businesses owned by minors and other incapacitated persons or by persons residing outside the Province of Madras;

(*e*) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee, or any receiver or manager appointed by or under any order of a Court;

(*f*) the assessment to tax under this Act of any turnover which has escaped assessment, and the period within which such assessment may be made, not exceeding three years;

(*g*) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such rectification may be made;

(*h*) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;

(*i*) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any assessing authority or on appeal or revision from any decision of such authority are kept confidential;

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(*j*) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;

(*k*) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act; and

(*l*) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the Provincial Government may provide that a person guilty of a breach thereof shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with fine which may extend to one thousand rupees and, where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication for a period of not less than four weeks.

(5) All rules made under this section shall be published in the *Fort St. George Gazette*, and upon such publication shall have effect as if enacted in this Act.

NOTES.

Sub-sec. 2.

This subsection makes provision for the framing of rules relating to (1) licences [clause (b)] (2) special cases of assessment [clauses (c) to (e)] (3) provisions calculated to ensure the availability of materials for proper assessment [19 (h), (g), and (i)] and (4) provisions intended to secure, on the one hand, the proper working of this Act [Clauses (g) to (k)] and on the other hand the proper functioning of officers under the Act [19 (J)].

Clause (a) The following are instances of matters required to be prescribed under this Act:—

See Section 2 (i) explanation
Sections 5 to 8
Section 11 (i) & (ii)
Section 13
Section 16, etc.,

For definition of 'prescribed' See Section 2 (f).

Clause (b) See Sections 5, 6 and 8 and Rr. 5 to 8 General Sales Tax Rules.

Rules under this clause are intended for enforcing the provisions of this Act. Rules for issue of licences cannot be framed in respect of the sale of all goods generally but only in respect of goods mentioned in Sections 5 and 6 and in respect of an agent under Section 8. The reason is this. There is no provision in the Act for the grant of licence to a dealer generally and rules framed must be consistent with the Act[1].

Sub-secs. (c) to (e). Rules have been framed for assessment in the following special classes of business. See Rr. 19 to 23 General Sales Tax Rules.

Businesses.

(i) discontinued[2]
(ii) whose ownership has changed[3]
(iii) owned by incapacitated persons like minors, lunatics and idiots[4]
(iv) owned by persons residing outside the Province[5]
(v) owned by a person whose estate is administered by the Court of Wards[6]
(vi) owned by a person whose estate is administered by the Administrator General[6]
(vii) owned by a person whose estate is administered by the official trustee[6]
(viii) owned by a person whose estate is administered by a receiver or manager appointed by court.[6]

Incapacitated persons (clause d). Minors, lunatics and idiots are incapacitated persons in the eye of law since they have not the capacity to contract.

Control of Court of Wards. Under Section 9 of the Madras Court of Wards Act (1 of 1902) the Collector of the District may in certain cases take steps for the immediate protection of the property of a disqualified heir.

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[1] A.I.R. 1934 Cal. 537. (See *Introduction*—Interpretation of Rules).

[2] Cp. Ss. 25 and 44 Income Tax Act.

[3] Cp. Sec. 63 Income Tax Act.

[4] Cp. Sec. 40 Income Tax Act.

[5] Cp. Ss. 40 & 42 Income Tax Act.

[6] Cp. 41 Income Tax Act.

Control by the Administrator General. Section 9 of the Administrator General's Act (3 of 1913) provides for administration by the Administrator General of estates of persons other than persons exempted under that Act, if no person has applied for probate or letters of administration of the estate of the deceased.

Control by the Official Trustee. Under sections 8 and 9 of the Official Trustees Act (2 of 1913) an official trustee may be appointed trustee of property by a person in a settlement or in a will, or the High Court may appoint an official trustee, as trustee of property under section 10 of that Act.

Manager or receiver appointed by court. The reference is to appointment of receivers in suits pending disposal thereof under Order 40, Rule I, C.P.C. or to receivers appointed under section 44 of Specific Relief Act as part of the relief prayed for in the suit.

(f) The maximum period for assessment of turnover which has escaped taxation is fixed at three years in this sub-section[7]. But the rule framed (R. 17 General Sales Tax Rules) fixes the period as one year.

(g) This provision may be compared to the anologous provision in the Income Tax Act[8].

(h) Rules may be framed:

(i) to compel submission of return[9].
(ii) to compel production of documents[10].
(iii) to enforce attendance of witnesses[11].
(iv) to examine witnesses on oath or affirmation[11].

For rules framed see Rr. 24 to 27 General Sales Tax Rules.

Oath or affirmation. Oath is an appeal to God to witness the truth of a statement made. An affirmation is a declaration without oath. The latter is allowed to be made in the case of certain religionists who object to take oath (e.g., Hindus and Mahomedans)[12].

(i) Rules 30 General Sales Tax Rules provides for all kinds of evidence oral and documentary furnished before authorities acting or constituted under this Act, being kept confidential[13].

(j) Officers enforcing the Act mean not only officers concerned with assessment but include officers enforcing licensing provisions as well (Ss. 5, 6 and 8). See also section 14 of this Act which sets out the powers of certain officers.

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[7] Cp. Sec. 34 Income Tax Act which fixes the period at one year.

[8] Cp. Sec. 35 Income Tax Act.

[9] Ss. 15 (a) of this Act makes failure to submit return punishable.

[10] Cp. Sec. 37(b) Income Tax Act.

[11] Cp. Sec. 37(a) Income Tax Act.

[12] See Oaths Act Ss. 5 and 6.

[13] Cp. Sec. 54 Income Tax Act.

(k) Procedure may relate to assessment or licence. Procedure may also relate to appeal and revision. (See Ss. 11 and 12) including the prescribing of "forms"[14]. See Section 11(2).

(l) See section 21.

Sub-sec. (3). See commentary to sec. 15. See also R. 32 General Sales Tax Rules.

Sub-sec. (4) & (5). Draft rules should be previously published for a period of not less than four weeks (sub-sec. 4). This publication is in the *Fort St. George Gazette* (sub-sec. 5). After the draft rules are published the rules would still not come into operation unless they are finally published in the *Fort St. George Gazette* (sub-sec. 5). On such publication they have the force of law (sub-sec. 5)[15]. If the rules relate to the determination of turnover the rules have to be approved by the Legislative Assembly also [Sec. 3(2) proviso].

Transitional provision for levy of tax

20. If, when this Act comes into force, the tax is leviable for the second half of any year, it shall be levied in accordance with the scale specified in section 3 and on the basis of the turnover as determined in accordance with the rules made under this Act.

NOTES

Legislative changes. In the original bill the amount of tax payable was specifically mentioned and the basis of tax was to be in accordance with the turnover for the first half year. The Select Committee redrafted the section in a simpler and briefer form.

Comments

This Act has no retrospective operation and the year for the purpose of this Act being the financial year, this Act can, in the normal course of things, apply to turnover only from the next financial year. The Legislature has therefore expressly enacted that, even for the second half of the financial year (from 1st October to 31st March) tax is leviable.

The scale of tax is to be as specified in Section 3 and the determination of the turnover is to be in accordance with the rules made under this Act. The provisions of this Act relating to the determination of turnover and the scale of tax which normally apply to a full financial year get attracted even in respect of the second half of the financial year by reason of this section.

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[14] Sec. 11(2) of this Act.

[15] See "Interpretation of Rules" Introduction.
A.I.R. 1923 Pat. 1 (S.B.)

Basis of calculation. This section does not specify that the tax for the second half of the year 1939—40 is to be on the basis of the turnover for the first half of the year. But this is a matter which may be provided by the rules made under this Act. [See Section 3 (3) and commentaries thereto.]

Assessment and collection of tax. The provisions of this Act relating to assessment and collection apply to the levy of tax even for the second half year though this section does not specifically state so.

Revision and Appeal and other provisions. The provisions of this Act relating to Appeal, Revision (Sections 11 and 12) and the other provisions of this Act (e.g., Sections 15 to 18) apply to the levy of tax for the transitional period.

Power to remove difficulties.

21. If any difficulty arises in giving effect to the provisions of this Act, the Provincial Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

NOTES

The object of Section 19(2)*l* and Section 21 is to provide for the need to remedy any lacuna in working the Act. "The provisions are not intended to alter the law" as approved by the Legislature or to "add to the laws of the land substantially without legislative sanction." The provisions are not intended to provide a means of escape from the legislative machinery of the land[1].

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[1] Premier's speech in Legislative Council on 19th May. (Legislative Council Debates Vol. VIII No. 8 pp. 515 & 516.)

RULES

THE MADRAS GENERAL SALES TAX

(TURNOVER AND ASSESSMENT)

RULES, 1939.

General Summary.

The Turnover and Assessment Rules relate to the first two requisites for taxation, i.e., (1) determination of the turnover and (2) the assessment of tax. Rules 4, 5, 8, 11 (3), 13 (4) and 15 (4) relate to the former class while the rest of the rules belong to the latter class.

In the main, the rules relating to the determination of turnover fall into two heads (i) rules relating to the calculation of turnover or rules relating to the determination of *gross* and *net* turnover (Rules 4 and 5) and (ii) rules relating to the determination of turnover in the absence of a return. The latter set of rules may be properly considered with the rules relating to assessment.

The rules relating to assessment fall into two divisions, rules 6 to 14 providing for assessment generally in respect of all goods and rules 15 and 16 providing for assessment in respect of hides and skins. Rule 17 makes a special provision for submission of returns and assessment where goods are exchanged. [Section 2 (h)].

Calculation of turnover (Rules 4 and 5)

The two rules set out the two preliminary stages leading to taxation. Under Section 4, the gross turnover has to be determined either by reference to the *buyer's scheme* or the *seller's scheme* as provided in the rules. Secondly, the net turnover has to be determined after deducting certain amounts [Rule 5 (a) to (i)] from the gross turnover. In the case of a firm with branches, the aggregate turnover of the branches is the turnover of the business [Rule 5 (3)].

General Assessment Rules

The General Assessment Rules (rules 6 to 14) fall into six convenient divisions. The very first stage in assessment is the initial *submission of returns* (Rule 6). The second stage is reached in the rules relating to *provisional assessment* (rules 7 to 9). *Payment* of tax provisionally assessed may be considered as the third stage in assessment (rule 10). Rule 11 provides for the *final submission* of return and *final assessment* which represent the next two stages in assessment. Rule 12 relates to payment of *additional tax* as finally assessed or *refund of excess tax* already collected on the basis of provisional assessment. Rule 13 provides for an alternative system of *monthly submission of returns* and payment of tax instead of the cumbrous procedure in provisional and final assessment stated above. But the alternative system applies only to dealers with turnover of Rs. 20,000 and over who choose to adopt the system.

Taxation of Hides and Skins.

[Rules 4 (2), 5 (g) & 15 & 16].

In the case of hides and skins there are at least three broad stages through which they pass before being used as a finished product. Firstly, raw hides may be sold and purchased. Secondly, hides are tanned. Thirdly, after being tanned, the finished articles are sold. All the stages may take place within our province. Again, either raw skin or dressed skin may be imported into our province or may be exported from our province. Further, persons who deal in hides and skins may be licensed or may be unlicensed.

Unlicensed dealers.

The rule of exemption in Section 3(1) (*provisos* 1 and 2) and rule 5(3) apply to all dealers in hides and skins whether licensed or unlicensed. But, the modification embodied in Section 6 (taxation at one point) applies only to *licensed* dealers. In the case of transactions of unlicensed dealers, the cumulative rule of taxation applies. [See Rule 16 (5).]

Licensed dealers.

In the case of licensed dealers if all the stages through which hides and skins pass are within the province, the tax is levied only at the stage of sale to a tanner (second stage) and the tax is levied from the tanner [rule 16 (2)] the amount being the net turnover (rule 5) for which the goods are *bought* by him (rule 4). If tax is levied at the second stage the goods are exempt from taxation at other stages [rule 16 (3)]. If however, the tanner's turnover is less than Rs. 10,000 and is thus exempt from taxation, the goods are taxed at the next stage of sale of the goods by a dealer not so exempt, and thereafter the goods are exempt [rule 16 (3) and (4)].

If however, raw hides and skins (untanned) are *exported* outside the province, the *last* dealer purchaser in the province with a turnover of Rs. 10,000 and over is taxed and the tax is levied on the amount of *purchase* [rule 16 (2) ii].

If however, hides and skins are *imported* after being tanned outside the province, the goods are taxed at the *first* sale of the goods in the province by a licensed dealer with a net turnover of Rs. 10,000 and over, the tax being levied on the *seller* on the basis of the amount for which the goods are sold [rule 16 (4)].

Rule 15.

Rule 15 applies the principle of monthly submission of returns and assessment system embodied in Rule 13 to dealers in hides and skins.

General rules relating to returns leading to taxation.

The following are some general rules applicable to all returns.

(i) Return by a firm with branches must include the return of the branches as well [rule 5 (2)].

(ii) The obligation to submit a return arises only if the net turnover is or is expected to be Rs. 10,000 and over. [See rules 4(3) ; 6 1) (a) (b) and (c) ; 6(2) ; 15(2)].

(iii) Return has to be submitted only to the assessing authority of the area in which the principal place of business is situate. [Rule 6 (1) and (2) ; 11(1)].

(iv) Except in the case of hides and skins a return must mention both the *gross* and *net* turnover [rule 6(1) ; 11(1) ; 13(1) ; etc.].

General rules relating to assessment:

When a return is submitted which is correct and complete, assessment is on the basis of return. But the assessing authority has to satisfy himself that the return is correct and complete. [See Section 9 (2).] To satisfy himself, the assessing authority may (i) scrutinise the accounts and (ii) may make such enquiry as he considers necessary [rules 7; 11(2); 13 3); 15(3)]. If the return is incorrect or incomplete notice would issue to the dealer to prove the correctness and completeness of the return [rules 9; 11(3); 13(4); 15 (4)] and the assessing authority would then determine the turnover to the best of his judgment after making such enquiry as he considers necessary. [Rules 8; 11(3); 13(3); 15(4).] If turnover is determined at a figure different from what is shown in the return, reasons have to be recorded (rule 14).

If no return is submitted, the assessing authority may determine the turnover to the best of his judgment [rules 8; 11(3) 13(3); 15 (4)].

In the case of hides and skins and in the monthly submission of return and payment system, the assessing authority can assess to the best of his judgment if firstly, no return is submitted within the prescribed time, secondly, if the return is incorrect or incomplete and thirdly, if the return, is not accompanied by payment of the monthly tax [rules 13 (4) and 15 (4).]

Scope of Turnover.

The question may arise "whether the turnover tax will be levied in cases where goods are attached and brought to sale under the decree of a Civil Court and in cases of sale of pledged articles or title-deeds which have been mortgaged. Sales under a court decree will not be liable to the tax. The liability to tax of sales of pledged articles depends on the circumstances of each case. The sale of a pledged article or security concerned in a casual transaction not carried out by the seller as part of his regular business would be exempt. Cases of sale by a pawnbroker however would be a part of his normal business and would be liable to the tax." (*Press Communique issued by the Ministry of public Information*). Sale of immovable property is not taxable. (See also pp. 10 to 13 and *Introduction* p. xxii.)

History of the Rules

These rules were published in draft in the *Fort St. George Gazette* dated 18th July, 1939. They were placed before the Legislative Assembly on the 7th August and with a few minor changes were approved by that body. [See Sec. 3 (2) *proviso.*] The rules as approved by the Assembly were published in the *Fort. St. George Gazette* (extraordinary) dated 15th September, 1939. Like all rules framed under the Act, these rules have the force of Law. [Sec. 19 (5).]

REVENUE DEPARTMENT.

Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

Fort St. George, September 12, 1939.

No. 818

(G. O. No. 2874, Revenue).

In exercise of the powers conferred by subsection (2) of section 8 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules:—

RULES.

1. These rules may be called the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

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2. They shall come into force on the 1st day of October, 1939.

3. In these rules, unless there is anything repugnant in the subject or context—

(a) 'the Act' means the Madras General Sales Tax Act, 1939;

(b) 'Form' means a form appended to these rules;
(c) 'Government treasury' means a treasury or sub-treasury of the Provincial Government;
(d) 'month' means a calendar month; and
(e) 'section' means a section of the Act.

Comments

"Unless there is anything repugnant...........context". See commentaries to sec. 2 page 3.

4. (1) Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by him.

(2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by him

(a) groundnut,

(b) leaf tobacco,

(c) cashew,

(d) untanned hides and skins bought by a licensed tanner in the Province, and

(e) untanned hides and skins exported outside the Province by a licensed dealer in hides or skins.

Comments

This rule must be read with sec. 3(1) *proviso 2*. (See page 32 commentaries.) Certain goods which are generally articles of export are taxed at the stage of purchase or on the *buyer's basis* while in the generality of cases goods are taxed at the stage of sale or on the *seller's basis*.

Leaf-tobacco. This is on the buyer's taxation scheme. For definition of the term see sec. 2 (5) and 2 (15) of the Tobacco Act. Leaf tobacco is not exempt under the Act while manufactured tobacco is exempt[1]. See page 35 commentaries.

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[1] An amendment seeking to delete tobacco from the list and two amendments seeking to add the words "exported outside the province" were negatived. The Premier however said that if any particular commodity is over-taxed, steps will be taken to remedy it separately after experience of working the Act.

(Legislative Assembly Debates Vol. XIII, No. 4, pp. 258 to 264).

(*c*) Cashew[2] see below.

(*d*) and (*e*) See commentaries to rules 15 and 16.

5. (1) The tax under section 3 (1) shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses *(a)* to *(i)* shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer—

(a) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount;

(*b*) all amounts allowed to purchasers in respect of goods returned by them to the dealer provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser;

(*c*) all amounts for which the dealer sells articles which are not in his stock but which are obtained by him from another dealer specially to accommodate a particular customer and are immediately sold to such customer provided that the sale is entered in the accounts then and there as an accommodation sale together with the name of the dealer from whom the articles were obtained;

(*d*) all amounts for which goods excluded from the operation of the Act under section 4 are sold, provided that separate accounts are kept for transactions in each of such goods;

(*e*) all amounts for which goods exempted under section 5 are sold, provided that the dealer is licensed under the Act in respect of such business and that the transactions are by virtue of the Act or these rules or the provisions of the licence exempt from taxation under the Act;

(*f*) all amounts for which goods are sold or purchased by a person licensed under section 8, provided that such sales or purchases are exempted from taxation under the Act by virtue of the provisions of the Act or these rules or the terms of the licence;

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[2] A plea to delete cashew from the buyer's taxation scheme, and to include the article with manufactured articles under Sec. 7 was strenuously put forward, with a view to prevent the migration of the industry to adjoining States. On the assurance of the Premier that the matter would be reconsidered after a year, the amendment moved for the purpose was withdrawn. (Legislative Assembly Debates Vol. XIII, No. 4, pp. 264 to 271.)

(*g*) all amounts for which hides or skins are bought or sold except such amounts as are liable to taxation under rule 16, provided that the dealer is licensed in respect of such transactions and that the transactions are carried on in accordance with the provisions of the Act, these rules and the conditions of the licence;

(*h*) all amounts realized by the sale by a dealer of his business as a whole; and

(*i*) in the case of sales of salt by the dealer who has paid to the Central Government the duty on the salt so sold the duty paid by such dealer in respect of such salt.

(2) In the case of dealers having more than one place of business the aggregate turnover of all such places of business shall be taken as the turnover of the business for the purpose of these rules. All returns prescribed by these rules shall in such cases be submitted by the head office in the Province and shall include the turnover of all branches of the business. Each branch shall also intimate to the assessing authority of the area in which it is situated the fact that the return of the turnover of its business is included in the return submitted by its head office and shall specify the name and address of such head office.

(3) For the purpose of determining whether a dealer is eligible for exemption under the first proviso to section 3 (1) only the net turnover as defined in sub-rule (1) shall be taken into consideration.

Comments.

Sub-rule 1.

Discount. This sub-rule must be read with the first portion of explanation (ii) to Sec. 2 (i).

(*b*) *Refund*. This sub-rule must be read with the second portion of explanation (ii) to Sec. 2(i). The terms "goods returned" include also the value of containers returned[3].

(c) *Accommodation Dealer*. This sub-rule must be read with explanation (iii) to Sec. 2 (i) *immediately*. See commentary page 28. *Articles*. It is not clear why the term "articles" is used when S. 2(i) explanation (iii) uses the term "goods".

(*d*) This sub-rule must be read with Sec. 4.

(*e*) This sub-rule must be read with Sec. 5.

(*f*) This sub-rule must be read with Sec. 8.

Clauses (e) and (f) make provision for exemption under these rules as well and the range of exemption is widened

(*g*) This sub-rule has to be read with sec. 6. This rule and rule 16 carry out the principle of taxation at a single point as provided in Sec. 6.

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3. Premier's reply (Legislative Assembly Debates Vol. XIII, No. 4, p. 276).

(*h*) This sub-rule carries out the assurance of the Premier that sale of a business as a going concern is not covered by the Act. (See p. 13 commentaries).

(*i*) Deduction of amount of duty paid by a dealer in respect of *salt* is a new concession introduced by the rules. But no deduction is allowed in respect of the *duty paid for matches and sugar.*[4]

Sale of by-products. No deduction is allowed for the sale of by-products; for such sale is a separate and different transaction.[5]

Insurance freight, etc. No deduction is allowed on account of insurance, freight or charges or commission and other items reducing actual price[6] since it is difficult to get at the meaning of rebates, commissions, etc., and such deduction would involve elaborate investigation without corresponding advantage to the mercantile public.

Sub-rule 2.

The sub-rule falls into two parts. The earlier part provides that the turnover of a firm with branches is the aggregate turnover of the branches as well. The later portion of the sub-rule provides for the submission of return by the head office for the entire business. (See page 46 commentaries).

It must be noted that the Act taxes only sales within the Province. So, if the head office of a firm is in the Madras Province, though the branches are outside the Province, the sales in the branches would not be taxed[7] . But the Government has the right to examine whether a transaction is really within the Province or outside It[7] .

6. (1) Every dealer carrying on business on the first day of October, 1939 shall, before the 15th day of October, 1939, submit to the assessing authority of the area in which his principal place of business is situated—

(*a*) if he was carrying on business during the whole of the year ending the 31st day of March 1939 and his net turnover for that year is not less than Rs. 10,000 a return of his gross and net turnover for that year in Form A; or

(*b*) if he was not carrying on business during the whole of the said year a return in Form A-1 showing—

(i) his gross and net turnover for the first twelve months of his business in case he was carrying on business for a period of not less than twelve months before the 1st day of October 1939 and his net turnover for the first twelve months of his business is not less than Rs. 10,000; or

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[4] An amendment to include duty paid for sugar and matches was withdrawn on the assurance of the Premier that the matter would be reconsidered after some time (Legislative Assembly Debates Vol. XIII, No. 4, pp. 271 to 273).

[5] Premier's reply to amendment to exclude sale of by-products (Legislative Assembly Debates Vol. XIII, No. 4, p. 280).

[6] Premier's speech in the Legislative Assembly. Legislative Assembly Debates (Vol. XIII, No. 4, pp. 276 and 277).

[7] The Prime Minister explaining the position stated that if sales by the branches are outside the Province. They would be entitled to exemption. But if dubious transactions are allotted to the branches, they may not escape taxation by the mere fact that the transactions are entered in the account books of the branches. (Legislative Assembly Debates Vol. XIII, No. 4 p. 282).

(ii) his estimated gross and net turnover for the first twelve months of his business in case he was not carrying on business for a period of twelve months before the said date and his estimated net turnover for the first twelve months of his business is not less than Rs. 10,000.

(2) Every dealer commencing business after the first day of October 1939 whose estimated net turnover for the first twelve months of his business is not less than Rs. 10,000 shall within thirty days of commencing his business submit to the assessing authority of the area in which his principal place of business is situated a return in Form A-1 showing his estimated gross and net turnover for the first twelve months of his business.

7. The assessing authority shall if he is satisfied, after such scrutiny of the accounts of the dealer and such enquiry as he may consider necessary, that the return submitted under rule 6 is correct and complete, fix provisionally on the basis of the return the annual tax payable at the rates specified in section 3 (1).

8. If no return is submitted by the dealer as required by rule 6 or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall after making such enquiry as he considers necessary determine the turnover of the dealer to the best of his judgment, and fix provisionally the annual tax payable at the rates specified in section 3 (1).

9. Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, before taking action under rule 8, issue a notice to the dealer calling upon him to produce his accounts and prove the correctness and completeness of his return at a time and place to be specified in the notice.

10. As soon as the tax has been provisionally fixed under rule 7 or rule 8 the assessing authority shall issue to the dealer a notice in Form A-2 and the dealer shall pay for each month of the year of assessment one-twelfth of the tax provisionally fixed at the time and in the manner specified in the notice, the monthly instalments due for the months preceding the date of the notice being paid in a lump sum.

11. (1) Every dealer liable to submit a return under rule 6, except those who have elected to be assessed by the method described in rule 13, shall, on or before the first day of May in

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every year submit to the assessing authority of the area in which his principal place of business is situated a return in Form A showing the actual gross and net turnover for the preceding year.

(2) On receipt of this return the assessing authority shall, if he is satisfied, after such scrutiny of the accounts and such enquiry as he considers necessary that the return is correct and complete, finally assess on the basis of the return the tax payable under section 3 (1) for the preceding year.

(3) If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority may, after following the procedure prescribed in rules 8 and 9, finally assess the tax according to the best of his judgment.

(4) In addition to making the final assessment for the previous year under sub-rules (2) and (3) the assessing authority shall, at the same time, make the provisional assessment for the current year and shall issue to the dealer a notice in Form A-2.

12. If the final assessment made under rule 11 is greater than the provisional assessment made under rule 7 or rule 8, the assessing authority shall serve upon the dealer a notice in Form B, and the dealer shall pay the sum demanded at the time and in the manner specified in the notice. If the final assessment is lower than the provisional assessment, he shall serve upon the dealer a notice in Form C.

13. (1) In lieu of the method of assessment described in rules 7 to 12 the method described in sub-rules (2) to (5) may, at the option of the dealer, be adopted at any time in the case of dealers whose net turnover exceeds Rs. 20,000. If the dealer desires that this method of assessment should be applied to him from the beginning of any year he shall intimate his desire to the assessing authority at the time of submitting the return prescribed in rule 6 or thereafter before the 1st of April in any year. If, however, he exercises the option after the commencement of any year he shall along with the intimation of his exercise of such option submit to the assessing authority a return in Form A-3 showing the gross and net turnover for the period commencing from the beginning of that year up to the end of the month immediately preceding and shall therewith forward a receipt from a Government Treasury or a cheque in favour of the assessing authority for the full amount of the tax payable by him for such period after deducting therefrom any tax which he might have paid for that year under rule 10.

(2) The dealer shall submit to the assessing authority, on or before the last day of November 1939 and thereafter on or before the last day of every month, a return in Form A-3 showing the gross and net turnover for the preceding month. Along with

the return, he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates at the rate specified in section 3 (1).

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or cheque for the full amount of the tax payable or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, and after giving the dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted, determine the turnover to the best of his judgment and assess the tax payable for the month and shall serve upon the dealer a notice in Form B-1 and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently it is found that the amount paid by the dealer is in excess of the correct tax payable under section 3 (I), such excess shall, at the option of the dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

14. If in any case the assessing authority determines the turnover at a figure different from that shown in a return submitted under the provisions of these rules, he shall record his reasons briefly in writing and shall furnish the assessee with a copy of such record. Nothing contained in this rule shall affect the validity of any assessment duly made.

15. (1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings.

(2) Every tanner or other dealer in hides or skins whose net turnover for a year has been or is expected to be not less than Rs. 10,000 shall submit to the assessing authority, on or before the last day of November 1939 (or the last day of the month following that in which he commences business) and thereafter on or before the last day of every month, a return in Form A-4 or, as

the case may be, in Form A-5 showing his transactions for the preceding month. Along with the return he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates.

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or cheque for the full amount of the tax or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, and after giving the tanner or other dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted, determine the turnover to the best of his judgment and assess the tax payable for the month and shall serve upon the tanner or other dealer a notice in Form B-1 and the tanner or other dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently, it is found that the amount paid by the tanner or other dealer is in excess of the correct tax payable, such excess shall, at the option of the tanner or other dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

16. (1) In the case of hides and skins the tax payable under section 8 (1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the Province or are sold for export outside the Province.

(i) In the case of all untanned hides or skins sold to a tanner in the Province, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him.

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the Province but are exported outside the Province, the tax shall be levied from the dealer who was the last dealer not exempt from taxation under the first proviso to section 8 (1) who buys them in the Province, on the amount for which they were bought by him.

(3) Sales by licensed dealers of hides or skins which have been tanned within the Province shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been tanned in a tannery which is exempt from taxation under the first proviso to section 8 (1) the sale of such hides or skins shall be liable to taxation as under the next sub-rule below dealing with hides or skins tanned outside the Province.

(4) Sales by licensed dealers in hides or skins which have been tanned outside the Province shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from taxation under the proviso to section 8 (1) who sells them within the Province. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

(5) Sales of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of section 8, be liable to taxation on each occasion of sale.

Gross and net Turnover.

Comments.

The rules (6 to 16) must be read with Section 9 of the Act.

Assessing Authority

The term is used in rules 6 to 17. Who are the assessing authorities? See notification No. 1 See also notes to Section 2 (a) page 3. Assessing authorities must act with utmost fairness in order that they may not give cause for any complaint (A.I.R. 1937 Oudh 416). See Rules 4 and 5.

Assessment to the best of judgment

Generally speaking, the rules provide that where no return is furnished or where the return is incorrect and incomplete, the assessing authority may determine the turnover to the best of his judgment[1]. [See rules 8; 11 (3); 13 (3); 15 (4).] The words *absence of return* cover not only a case of *absolute failure* to submit a return, but a case in which a return is submitted which return however, *no return* is under this Act[2].

The words *assessment to the best of judgment* have been used in Section 23(4) of the Income-tax Act and the decisions under that enactment may be of some guidance in interpreting these words in the rules. A return was submitted of only some of the branches of a firm and in spite of opportunity afforded, the assessee deliberately failed to correct the return by including the return of the branches. It was held that the assessing authority was entitled to assess to the best of his judgment[3]. Similarly, where only a letter was sent by an assessee pleading non-liablity to be taxed, it was held that there was no return and an assessment can be made by an authority to the best of his judgment[4]. Again, a return which mentions the figures only approximately

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1. Rules 8, 11(3), 13(4), 15(4), etc,
2. See commentaries to Sec. 9. p. 45.
3. A.I.R. 1933 All. 197.
4. A.I.R. 1931 Pat. 306 (F.B.)

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can be treated as a case of absence of return and assessment can be made to the best judgment of the assessing authority[5] . For other cases see below[6] .

The word "to the best of judgment" means "as best as he can".[7] The assessment must be made according to the rules of reason, justice[8] equity and good concience[9] .

An assessing authority cannot act in an absolutely arbitrary[10] capricious or vindictive manner[11] in making an assessment to the best of his judgment[10] as though such assessment is by way of penalty[12]. But it is not necessary that he must be guided by purely judicial principles[10], and he need not exercise a judicial discretion in making an assessment to the best of his judgment[10]. The true principle is this. To some extent an assessment to the best of judgment is arbitrary[13]. But the assessment should be reasonable and must proceed on some data[14]. Though the assessment is a piece of guesswork, it must be honest guesswork[15] and usually the materials on which the assessment is founded are stated[13]. But the assessment must not be founded purely on the private opinion[13] or on the fancy or on the humour of the officer[16].

It is open to the assessing authority to conduct a local enquiry[17] and the rules provide for the conduct of local enquiry if the assessing authority thinks necessary[18]. The assessing authority can also take into consideration the repute in regard to the assessees' circumstances[19]. Usually a note of the details and results of the enquiry are placed on record[17]. But the absence of such local enquiry, or the absence of a record of such enquiry does not render the assessment invalid[19]. If account books are filed already which are neither false nor fraudulent, they must be used in fixing the assessment[20]. Even account books of previous or subsequent years, if available must be used[21] as also previous returns and previous assessments[22]. See also the case cited below[23].

Incorrect or incomplete.

The terms are used in rules 8, 9, 11 (3), 13 (4), and 15 (4). See commentaries to Section 9, page 45.

Sale in the Province.

The words are used in rule 16 (2). See commentary to Section 2 (h), page 16 and introduction under the heading "Legal difficulties in working the Act" and also commentaries to rule 5(2) at p. 97.

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[5] A.I.R. 1935 Lah. 858.

[6] See A.I.R. 1928 Lah. 729 where failure to produce account books was held to justify assessment to the best of judgment.
See also A.I.R. 1930 Pat. 81 (F.B.)
A.I.R. 1931 Cal. 729.
A.I.R. 1929 Lah. 173.

[7] A.I.R. 1931 Rang. 194 (F.B.)

[8] A.I.R. 1930 Rang. 33.

[9] A.I.R. 1931 Lah. 87 (F.B.)

[10] A.I.R. 1931 Lah. 87 (F.B.)
A.I.R. 1931 Rang. 194 (F.B.)
contra A.I.R. 1926 Lah. 233.

[11] A.I.R. 1937 P.C. 133.

[12] A.I.R. 1934 All. 559.

[13] A.I.R. 1930 Rang. 33 (S.B.)

[14] A.I.R. 1934 All. 559.

[15] A.I.R. 1937 P.C. 133.

[16] A.I.R. 1930 Rang. 33.

[17] A.I.R. 1934 Nag. 183 (2).

[18] Rr. 8, 11(3), 13(3), 15(4), Turnover and Assessment Rules.

[19] A.I.R. 1937 P.C. 133. reversing A.I.R. 1934 Nag. 183 (2).
See also A.I.R. 1938 Lah. 867.

[20] A.I.R. 1930 Rang. 33.

[21] A.I.R. 1934 All. 559.

[22] A.I.R. 1937 P.C. 133.

[23] A.I.R. 1932 Rang. 52 (S.B.)
Accounts with some entries inexplicable filed—Held officer must proceed under Sec. 23 (3) rather than under Sec. 23 (4) Income-tax Act.

17. Every dealer who has bought or sold goods for valuable consideration other than money, shall separately specify in the return of turnover which he is required to submit under these rules the quantity of goods so bought or sold and the description in sufficient detail of the valuable consideration for which the goods were bought or sold. The assessing authority shall fix the value of such consideration in money for the purpose of determining the turnover and assessment of the tax payable under the Act and the value fixed by such authority shall, subject to the appeal and revision provided for in the Act and the rules made thereunder, be final.

Comments.

This rule must be read with Section 2 (h). The need for this provision arises by reason of the wider definition of the term 'Sale' which comprehends also 'exchange'. *Final* See commentary to Section 11 (4) page 54.

FORMS

Comments.

Notes.—There is no 'religiosity' about the forms appended to the rules. (The forms are not really part of the necessary rules to be made under Section 3). The entries in the forms are only intended to prevent evasion to give information wanted by the authorities under the Act. If in actual working there is considerable inconvenience in supplying information it is hoped that officers acting under the Act would accept the difficulties. [*Premier's reply to Mr. T. T. Krishnamachari's amendment to delete columns 4 and 6 in Forms A-1 and A-3 and column 4 in Form A-1. (Legislative Assembly Debates Vol. XIII, No. 4, p. 289).*]

FORM A.

(Return of Turnover.)

[*See* rules 6 (1) and 11 (1).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the year ending the 31st March 19 :—

Statement.

Name(s) and postal address(es) of dealer(s). (1)	Place or places of business. (2)	Nature of business (nature of goods bought or sold). (3)	Amount of gross turnover. (4)	Turnover and description of each class of goods exempt from the tax. (5)	Discount allowed. (6)	Amount refunded in respect of articles returned by customers. (7)	Turnover of accommodation sales. (8)	Net turnover liable to the tax. (9)

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Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the year ending the 31st March, 19 .

Place...............

Date...............

Signature of dealer(s).

NOTE.—(1) Give the turnover of the immediately preceding financial year.

(2) In column (2) note the addresses of the headquarters and of all branches of the business to which the return relates.

(3) The turnover of each class of goods for which exemption is claimed should be specified separately in column (5).

FORM A-1.

Return of $\frac{\textit{turnover}}{\textit{estimated turnover}}$.

[*See* rule 6 (1) and (2).]

[To be used only (i) by dealers who commence their business after the 1st day of October 1939, and (ii) by dealers who were carrying on business on the 1st day of October 1939 but who were not doing business during the whole of the year ending the 31st day of March 1939 or who commenced business after the 31st day of March 1939.]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our $\frac{\text{turnover}}{\text{estimated turnover}}$ for the first twelve months of business. I/We commenced business on..................

Statement.

Name(s) and postal address(es) of dealer(s). (1)	Place or places of business. (2)	Nature of business (nature of goods bought or sold). (3)	Gross or estimated gross turnover. (4)	Turnover or estimated turnover exempt from the tax. (5)	Net turnover or estimated net turnover liable to the tax. (6)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it represents my/our
turnover
estimate of the turnover likely to be realized
for the first twelve months of business.

Place......................

Date......................

Signature of dealer(s).

NOTE.—(1) In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) Estimated turnover should be furnished only by dealers who did not commence their business twelve months before the 1st October, 1939.

(3) Separate figures should be given in column (5) for each class of exempted goods.

FORM A-2.

Notice of provisional assessment and demand for payment of the tax.

(*See* rules 10 and 11.)

To

(The dealer).

Take notice that you have been provisionally assessed, under the Madras General Sales Tax Act, 1939 to a tax of Rs............... [rupees...........(in words)..................] only for the year ending 31st March, 19 .

This tax shall be paid in monthly instalments of Rs.............. [rupees...........(in words)] only. The tax for the months preceding the date of this notice shall be paid within fifteen days from the date of service of this notice, and the tax for each of the remaining months before the 10th day of the succeeding month,
by cheque in favour of the undersigned.
by remittance into the Government Treasury at......... ....
to the headman of..
to the tax-collector who will call for it
failing which the amounts will be recovered as if they were arrears

of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as determined by the assessing authority. } Rs............

Place....................

Date.....................

Assessing Authority.

NOTE.—If payment is made by cheque the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM A-3.

Return of Turnover.

[*See* rule 13(2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of....................

Statement.

Name(s) and postal address(es) of dealer(s). (1)	Place or places of business. (2)	Nature of business (Nature of goods bought or sold). (3)	Amount of gross turnover. (4)	Turnover and description of each class of goods exempt from the tax. (5)	Discount allowed. (6)	Amount refunded in respect of articles returned by customers. (7)	Turnover of accommodation sales. (8)	Net turnover liable to the tax. (9)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of................

Place.......................

Date........................

Signature of dealer(s).

NOTE.—In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) The turnover of each class of goods for which exemption is claimed should be specified separately in column (5).

FORM A-4.

(*Return of turnover in the case of tanners.*)

[*See* rule 15 (2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of...............................

Statement.

Name(s) and postal address(es) of tanner(s). (1)	Place or places of business. (2)	Amount for which hides and skins were purchased for tanning by the assessee(s) (3)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of............................

Place......................

Date.......................

Signature of tanner(s).

NOTE.—Note in column (2) the addresses of the head office and of all the branches of the business to which the return relates.

FORM A-5.

Return of turnover in the case of dealers in hides or skins.

[*See* rule 15 (2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our transactions for the month of........................

Name(s) and postal address(es) of dealer(s)........................

Place or places of business.........................

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Statement.

(*a*) For dealers in untanned hides or skins.

Amount for which goods have been sold to tanneries in the Province. (1)	Amount for which goods have been sold to other dealers in the Province. (2)	Amount for which goods have been sold on export outside the Province. (3)	Amount for which goods falling under column (3) were purchased by the dealer(s). (4)

(*b*) For dealers in tanned hides or skins.

Amount for which hides or skins tanned in the Province were sold. (1)	Amount for which hides or skins tanned outside the Province were sold. (2)	
	(i) Hides or skins bought from dealers in the Province.	(ii) Hides or skins bought from dealers outside the Province.

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of............................

Place.......................

Date.....................

Signature of dealer(s).

NOTE.—Note in column (2) the addresses of the head office and of all the branches of the business to which the return relates.

FORM B.

Notice of final annual assessment and demand.

(*See* rule 12.)

To

(Dealer)

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs..................

[rupees.............. (in words)] only for the year ending the 31st March 19 , and that, after deducting the total amount of the monthly payment(s) already made by you towards the tax for that year, you have to pay a (further) sum of Rs.................. [rupees ....(in words)] only. This balance of tax shall be paid within fifteen days from the date of service of this notice

~~by cheque in favour of the undersigned~~

~~by remittance into the Government treasury at...................~~

~~to the headman of.....................~~

to the bill collector who will call for it

failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as finally determined by the assessing authority. } Rs..................

Place...........................

Date............................

Assessing Authority.

NOTE.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM B-1.

Notice of final monthly assessment and demand.

[*See* rule 13 (4) and (5).]

To

(Dealer)

Take notice that you have been assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs............ [rupees.................... (in words)] only for the month of.....................19......, and that after deducting the payment(s) already made by you towards the tax for that month you have to pay a (further) sum of Rs............ [rupees...................(in words)] only. This amount shall be paid within fifteen days from the date of service of this notice

by cheque in favour of the undersigned, or

by remittance into the Government treasury at..................

failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as determined by the assessing authority. } Rs...............

Place..........................

Date..........................

Assessing Authority.

NOTE.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM C.

Notice of final assessment and refund order.

(*See* rule 12.)

To

(Dealer).

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs.................. [rupees..................(in words)] only for the year ending the 31st March, 19 . The total amount of tax paid by you already is Rs............ [rupees..................(in words)] only that is, Rs......... in excess of the tax due. A refund order is enclosed. You should apply to the Government treasury at..............for the refund of this sum within three months from the date of service of this notice failing which the amount will lapse to the Government.

Turnover as finally determined by the assessing authority. } Rs............

Place..........................

Date..........................

Assessing Authority.

THE MADRAS GENERAL SALES TAX

RULES AND NOTIFICATIONS

GENERAL SUMMARY.

Extent and Commencement.

The Act and all the rules come into operation on the 1st day of October 1939 (See R-2 Turnover Rules and General Sales Tax Rules). The Act and Rules are in force throughout the province including the Partially Excluded Areas, Railway lands in Madras States alone being excepted [See Notifications 3 to 5.]

Authorities constituted under the Act and Rules

Broadly speaking, one can say that original authorities on the one hand and appellate and revisional authorities on the other have been constituted under the Act.

Original Authorities.

Generally, the Assistant Commercial Tax Officer and in certain cases the Deputy Commercial Tax Officer are the original authorities who are the assessing and licensing authorities under the Act in respect of dealers and licensees whose principal place of business is situated within their jurisdiction. The general principles seem to be that the assistant commercial tax officer is concerned (1) with licensees who deal only in exempted goods

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like bullion, specie, cotton, cotton yarn, or who deal exclusively in cloth woven on handlooms, etc., (Section 5) and (ii) with all other dealers and licensees with an anticipated net turnover not exceeding Rs. 20,000 per year whether they enjoy *qualified* exemption under Sections 6 and 8 or whether they deal in exempted and non-exempted goods. In all other cases the Deputy Commercial Tax Officer is the original authority under the Act. (See Rule 5 General Sales Tax Rules and Notification No. 1).

Appellate and revisional authorities.

The Commercial Tax Officer of every District is the appellate and revisional authority for the District, though the ultimate revisional authority is the Board of Revenue. (Sections 11 and 12 of the Act and Rules 13 and 14 General Sales Tax Rules.)

Persons to be taxed or licensed.

All sales are liable to be taxed unless the goods are exempted or the transaction is exempted from tax. Generally the seller is taxed, though some goods like groundnut, leaf tobacco, and cashew fall within the buyer taxation scheme. (Rule 4 Turnover and Assessment Rules.) (Taxation of Hides and Skins, see p. 92.)

In the case of certain special classess of business, e.g., business owned by a minor, or incapacitated person or business of a dealer whose estate is administered by the Court of Wards, etc., provision is made for realisation of tax under the Act from the guardian or the Court of Wards, etc., (Rules 19 to 23 General Sales Tax Rules.)

Exemption or concession available to a dealer from tax.

(i) *Where licence is needed.*

The exemption mentioned in Sections 5 and 8 or the concession under Section 6 is available only if the dealer takes out a licence and pays the fee fixed. (Rules 5, 6 and 7 General Sales Tax Rules). But a person dealing exclusively in cloth-woven on handlooms is exempt from payment of licence fee. [*Ibid* Rule 6 (4).]

If in all the above cases no licence is taken, the transactions come within operation of Section 3 of the Act and are taxable on the turnover. [See Rule 7 General Sales Tax Rules and Rule 5 (e) and (f) Turnover and Assessment Rules.] For conditions relating to licence (see rule 6 General Sales Tax Rules).

(ii) *Where no licence is needed.*

Goods mentioned in Section 4 are exempt from taxation. But if a person deals in the goods mentioned in Section 4 as also goods taxable under the Act, he has to maintain separate accounts. Otherwise the exemption under Rule 5 (d) of Turnover Rules may not be available [Rule 5 (d) Turnover Rules and Rule 12 General Sales Tax Rules.]

(iii) *Rebate.*

See Section 7 and Rules 9 and 10 General Sales Tax Rules and Notification No. 2 for a list of articles entitled to rebate. [pp.136 & 137.]

Duties of Dealers and Licensees and powers of Officers

Duties.

The rules insist that dealers and licensees must maintain accounts with vouchers, etc., (Rule 11 General Sales Tax Rules). In fact not only are accounts needed to claim deduction under Rule 5 (1) clause (a) to (e) of turnover rules but in the case of a dealer dealing in exempted goods like the articles mentioned in Section 4, and non-exempted articles, the exemption does not seem to be available if separate accounts are not kept [Rule 5 (d) Turnover rules]. A licensee dealing in articles mentioned in Sections 4, 5 and 6 and engaging in transactions falling under Section 8, or a person licensed under Section 8 engaging in transactions not falling under Section 8, has to maintain separate accounts for each of the articles and transactions (Rule 12 General Sales Tax Rules). Dealers in hides and skins have to keep separate accounts for hides and skins tanned in this Province and tanned outside (Rule 12 General Sales Tax Rules.)

Powers.

The power to require production of documents or to furnish information required [Section 14(1)] is to be vested with officers of the Commercial Tax Department. (*Vide* Notification No. I). But the power of inspection and entry are sought to be vested with some officers of the Police, Revenue and Commercial Tax Department. [*Vide* Notification I and Section 14 (2) and (3).]

LICENCES

Return by Licensees [Rule 6 (9) and (10) General Sales Tax Rules.]

A dealer in *hides and skins* has to submit a return under Rule 15 of Turnover and Assessment Rules, and he need not submit a return under the General Sales Tax Rules. A dealer dealing in *exempted goods* (Sections 5, 6) and in *non-exempted* goods has to submit a return under the Turnover and Assessment Rules and as the gross turnover submitted by him would disclose transactions relating to exempted goods as well, he need not submit a return under the General Sales Tax Rules. But a dealer dealing only in *exempted* goods has to submit an annual return in Form VII [Rule 6 (10) General Sales Tax Rules.] Similarly, a licensee under Section 8 has to submit a monthly return in Form VI [Rule 6(9) General Sales Tax Rules.]

History of the Rules.

These rules in draft were published in the *Fort St. George Gazette* dated 28—7—39. After the expiry of the period of four weeks as prescribed in Sections 19 (4), they were published in the *Fort. St. George Gazette* extraordinary dated 15th September, 1939 as finally approved by the Government. These rules have also the operation of law by reason of Section 19 (5) of the Act.

MADRAS GENERAL SALES TAX RULES

Fort St. George, September 12, 1939

(G.O. No. 2375, Revenue).

I

No. 819.

In exercise of the powers conferred by section 19 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules :—

RULES.

PART I—PRELIMINARY.

1. These rules may be called the Madras General Sales Tax Rules, 1939.

2. They shall come into force on the 1st day of October, 1939.

3. In these rules, unless there is anything repugnant in the subject or context

(*a*) "the Act" means the Madras General Sales Tax Act, 1939;

(*b*) "Assistant Commercial Tax Officer" means any person appointed by the District Collector by name or by virtue of his office to exercise the powers of an Assistant Commercial Tax Officer;

(*c*) "Commercial Tax Officer" means any person appointed by the Provincial Government by name or by virtue of his office, to exercise the powers of a Commercial Tax Officer;

(*d*) "Deputy Commercial Tax Officer" means any person appointed by the District Collector, by name or by virtue of his office, to exercise the powers of a Deputy Commercial Tax Officer;

(*e*) "Form" means a form appended to these rules;

(*f*) "Government treasury" means a treasury or sub-treasury of the Provincial Government;

(*g*) "licensing authority" means the authority competent to issue licences under sections 5, 6 and 8;

(*h*) "month" means a calendar month; and

(*i*) "section" means a section of the Act.

4. For the purposes of these rules a person who deals in goods other than cloth and in cloth woven on hand-looms shall, if he has no dealings in cloth of any other description, be deemed to be a person dealing exclusively in cloth woven on hand-looms in so far as his dealings in cloth are concerned.

Comments.

This rule must be read with Section 5. This rule carries out the assurance of the Premier that Section 4 would not be subjected to far-fetched misapplication. (See commentry page 38). A grocery merchant selling foodstuffs to villagers, and also hand-woven cloth is entitled to exemption under Section 5 and under this rule. "The exemption from tax provided in section 5 of the Act in respect of cloth woven on hand-looms and sold by persons dealing exclusively in such cloth will not apply to a concern which deals both in cloth woven on hand-looms and in other kinds of cloth even if it keeps separate accounts and stock for the two kinds of cloth. As long as the firm is the same mere separation of accounts cannot confer any advantage and the exemption will not be available." (*Press Communique issued by the Ministry of Public Information.*)

PART II—LICENCES.

5. (1) Every person who—

(*a*) deals in bullion and/or specie, or

(*b*) deals in cotton and/or cotton yarn, or

(*c*) deals exclusively in cloth woven on hand-looms, or

(*d*) deals in hides and/or skins whether as a tanner or otherwise, or

(*e*) for an agreed commission or brokerage, buys and/or sells goods of any description on behalf of known principals, shall, if he desires to avail himself of the exemption provided in sections 5 and 8 or of the concession of single point taxation provided in section 6, submit an application in Form I for a licence in respect of each of his places of business to the authority specified in sub-rule (2) so as to reach him not later than the 15th day of October, 1939 :

Provided that in the case of a business which is commenced after the 1st day of October 1939, the dealer shall submit the application for the licence to such authority so as to reach him not later than 15 days from the date of commencement of his business if it is for a licence under clauses (*a*), (*b*), (*d*), or (*e*) and not later than 30 days from the date of commencement of his business if it is for a licence under clause (*c*):

Provided further that a licence obtained free of fee under the proviso to sub-section (1) of section 4 of the Madras Regulation of the Sale of Cloth Act, 1937, shall, if countersigned by the licensing authority specified in this rule, be deemed to be also a licence obtained under this rule to deal exclusively in cloth woven on hand-looms and be subject to the provisions of the Act and these rules.

NOTE.—The agent of a person (including a firm) outside the Province is in respect of transactions on behalf of such person a dealer for all the purposes of the Act and the rules made thereunder and is not eligible for a licence under section 8 in respect of such transactions.

(2) The application shall be submitted—

(i) to the Assistant Commercial Tax Officer of the area in which the applicant's principal place of business is situated—

(*a*) if the applicant does not deal in goods other than those specified in clauses (*a*) to (*e*) of sub-rule (1), or

(*b*) if the applicant deals in goods not specified in clauses (*a*) to (*e*) of sub-rule (1) in addition to those specified in all or any of those clauses and his anticipated net turnover does not exceed Rs. 20,000, or (*c*) if the applicant engages in transactions which are not exempt from taxation under the provisions of section 8 in addition to dealing in goods specified in all or any of clauses (*a*) to (*c*) of sub-rule (1) and his anticipated net turnover does not exceed Rs. 20,000, or

(*d*) if the applicant applies for a licence under clause (*d*) or (*e*) of sub-rule (1) or both and his anticipated net turnover does not exceed Rs. 20,000; and

(ii) to the Deputy Commercial Tax Officer of the area in which the applicant's principal place of business is situated in other cases.

Comments.

Rules 5 to 8.

These rules must be read with Sections 5, 6 and 8.

Rule 5.

The Government have issued "instructions that in cases in which a dealer has more than one place of business, the head of the office may submit applications for licences under rule 5 (1) and the returns prescribed under the rules in respect of the branch or subordinate offices also." (*Press Communique issued by the Ministry of Public Information.*)

Bullion and specie. See commentary p. 37.

Cotton and cotton yarn. See *Ibid* p. 37.

Person dealing exclusively in......handlooms. See *Ibid* pp. 37, 38 and rule 4 above.

For agreed commission. See *Ibid* pp. 41 and 42.

Net turnover. See Rule 5 Turnover and Assessment Rules and commentary pp. 94 to 96.

*Transactions which are not exempted.........*See pages 41 and 42 commentary.

6. (1) Every licence shall cover one place of business only and shall expire on the 31st day of March of the year in respect of which it is granted but may be renewed for periods not exceeding one year at a time on receipt of an application from the licensee.

(2) Every application for renewal shall be submitted in Form I so as to reach the licensing authority not later than one month before the commencement of the year for which the renewal is required.

(3) If an application for the grant or renewal of a licence is received after the date prescribed therefor the licence shall not be granted or renewed with effect from a date prior to the date of the receipt of the application and shall expire on the 31st day of March of the year in respect of which it is granted or renewed.

(4) The following fees shall be payable in advance along with every application whether for an original licence or for renewal, provided that no fee shall be payable for the grant or renewal of a licence for dealing exclusively in cloth woven on hand-looms. The applicant shall enclose with his application a treasury receipt or a cheque in favour of the licensing authority for the amount of the fee.

Scale of fees for licences.

	Per annum. Rs.
1 For dealing in bullion and/or specie ...	25
2 For dealing in cotton and, or cotton yarn	25
3 For dealing in hides and/or skins whether as a tanner or otherwise ...	10
4 For dealing as specified in section 8 ...	20

Note.—An application for a licence for the period commencing on the 1st day of October 1939 and ending with the 31st day of March 1940 or for any portion of such period, shall be accompanied by a cheque or receipt as aforesaid for one-half the amount of the fee fixed for the licence by this sub-rule.

(5) The licensing authority receiving the application may, after satisfying himself that the correct fee has been paid and that the applicant is eligible for the licence applied for grant or, as the case may be, renew a licence in such one of the Forms II to V as may be appropriate to his case.

(6) Every licence granted or renewed under these rules shall be deemed to have been issued personally to the licensee. No licence shall be sold or transferred.

(7) Where a licensee transfers his business to another person, the transferee shall obtain a fresh licence under these rules, but it shall be granted free of fee for the residue of the period covered by the original licence.

(8) Where a licence granted or renewed under these rules is lost or accidentally destroyed, a duplicate of the licence may be issued by the licensing authority on payment of a fee of one rupee.

(9) Every licensee under section 8 shall submit to the licensing authority on or before the last day of every month a return in Form VI for the preceding month.

(10) Every licensee other than a tanner or dealer in hides or skins shall, unless he submits returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, submit on or before the 20th day of June in every year to the licensing authority a return in Form VII of the turnover for the preceding year of all the business done by him.

Comments.

A suggestion was made to the Government "that there should be no time-limit within which applications under rule 6 (2) for renewal of licences under section 8 should be made." But the Government did not consider that any alteration of the rule as advisable. "Where delay is inevitable the circumstances should be explained to the licensing authority." *(Press Communique issued by the Ministry of Public Information.)*

Draft "rule 6(9) of the General Sales Tax Rules and Form VI appended to them have been amended so as to permit the submission of the return of turnover for a month before the last day of the next month." *(Press Communique issued by the Ministry of Public Information.)*

7. The exemptions provided in sections 5 and 8 and the concession of single point taxation provided in section 6 may be claimed only for the transactions carried on during the period covered by a licence.

8. Every licence granted or renewed under these rules shall be liable to cancellation by the Deputy Commercial Tax Officer in the event of a breach of any of the provisions of the Act, or of the rules made thereunder or of the conditions of the licence.

PART III—REBATES.

9. Every person claiming a rebate under section 7 shall submit to the assessing authority an application in Form VIII within three months of the delivery of the articles outside the Province.

10. On receipt of the application the assessing authority shall, after satisfying himself that the application is in order and that the rebate is admissible, send to the applicant a refund order for the amount of the rebate due, if the tax has already been paid, or if the assessment has been provisionally made under rule 7 or 8 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, adjust the amount at the time of final assessment under rule 11 of those rules.

Comments.

These rules must be read with Section 7.

PART IV—ACCOUNTS.

11. Accounts maintained by dealers and licensees together with all vouchers relating to stocks, deliveries, purchases, output, and sales shall be preserved for a period of one year after the close of the year to which they relate.

12. (1) If the goods in which a dealer or a person licensed under section 8 deals include any of the articles specified in sections 4, 5 or 6 in addition to any other articles, such dealer or person shall maintain separate accounts in respect of each class of articles specified in those sections.

(2) Dealers in hides or skins shall maintain separate accounts in respect of hides or skins tanned in the Province and of those tanned outside the Province.

(3) If a person who holds a licence under section 8 also deals otherwise than for an agreed commission or brokerage on behalf of known principals in the Province, he shall keep separate accounts in respect of such transactions and of transactions covered by the licence.

Comments.

These rules must be read with Section 13. The Government has issued instructions that "accounts certified by Registered Accountants should ordinarily be accepted for purposes of assessment and collection of the tax." *(Press Communique issued by the Ministry of Public Information.)*

PART V—APPEALS AND REVISION.

13. (1) Subject to the provisions of section 11, any person aggrieved by any original order of a licensing or assessing authority may appeal to the Commercial Tax Officer of the district.

(2) Every such appeal shall be preferred within 30 days of the receipt of the order appealed against.

(3) Every appeal shall be in writing, shall specify the name and address of the appellant, the date of the order appealed against, shall contain a clear statement of the facts and the nature of the relief prayed for and shall be signed and verified by the appellant in the form given below:—

"I...the appellant named in the above memorandum of appeal do hereby declare that what is stated herein is true to the best of my knowledge and belief."

(4) The memorandum of appeal shall be accompanied by the order appealed against in original or by an authenticated copy thereof unless the omission to produce such order or copy is explained to the satisfaction of the appellate authority, and by

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proof of payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable.

(5) The appeal may be sent to the appellate authority by post or may be presented to that authority or to such officer as the appellate authority may appoint in this behalf by the appellant or by his authorized agent or a legal practitioner.

(6) The appellate authority shall, after giving the appellant a reasonable opportunity of being heard, pass such orders on the appeal as such authority thinks fit.

14. (1) Every order passed on appeal under rule 13 shall, subject to the powers of revision conferred by section 12 and by sub-rule (2), be final.

(2) The Commercial Tax Officer may, in his discretion, at any time, either *suo motu* or on application, call for and examine the record of any order passed or any proceedings recorded under the Act by an Assistant or Deputy Commercial Tax Officer working under him, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings and may pass such order in reference thereto as he thinks fit.

15. (1) Every order of an appellate or revising authority shall be communicated to the appellant or petitioner, to every other party affected by the order, to the licensing or assessing authority against whose order the appeal was filed and to any other authority concerned.

(2) The order passed on appeal or revision shall be given effect to by the licensing or assessing authority who shall refund any excess tax or fee found to have been collected and shall also have power to collect any additional tax or fee which is found to be due, in the same manner as a tax or fee assessed by himself.

16. If the tax as determined in an appeal or revision is in excess of the powers of assessment of the initial assessing authority, the appellate or revising authority shall transfer the original records of assessment to the appropriate assessing authority who shall have power to collect the tax due in the same manner as if it were a tax assessed by himself.

Comments.

These rules have to be read with Sections 11 and 12. The effect of Rule 14 is to confer on the Commercial Tax Officer the power of revision. Both the Commercial Tax Officer and the Board of Revenue have been constituted as revisional authorities. (Cp. Sections 435 to 439 Cr.P.C. revision). See commentaries to Sections 11 and 12 pp. 51 to 56. "An appellant may employ anyone as his authorised agent including a Registered Accountant" for the purpose of rule 13 (5). *(Press Communique issued by the Ministry of Public Information.)*

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17. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, may, at any time within the year or the year next succeeding that to which the tax or licence fee relates, assess the tax payable on the turnover which has escaped assessment or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(2) If for any reason any tax or licence fee has been assessed at too low a rate in any year the assessing authority or the licensing authority, as the case may be, may, at any time within the year or the year next succeeding that to which the tax or licence fee relates, revise the assessment or the licence fee after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

Comments.

This rule is framed under Section 19 (2) (f). This rule is similar to Section 34 Income Tax Act. The following principles deduced from the decisions under the Income Tax Act would be of considerable guidance in interpreting this rule. The principles are applicable both to reassessment and relevy of licence fee.

Assessment—re-opening of

(See also page 46—commentaries.)

The principle of *resjudicata* does not apply in respect of an assessment made under the Act. (A.I.R. 1930 Mad. 209; See also A.I.R. 1929 Mad. 453.) But, when an assessment has been made after due enquiry by an officer, it operates to create an estoppel by record and a succeeding officer cannot arbitrarily change the assessment though if fresh facts come to light, an officer is entitled to reopen the assessment within the limits provided in this rule. (A.I.R. 1930 Mad. 209: 58 M.L.J. 260. A.I.R. 1938 Cal. 557; A.I.R. 1938 P.C. 175; A.I.R. 1936 Rang. 219; A.I.R. 1938 Lah. 867; 1939 I.T.R. 362.)

Reassessment must take place within the year or within the succeeding year. The wording of the rule seems to show that mere service of notice within the succeeding year is insufficient though under the Income Tax Act, the wording of which is different, it is sufficient. (A.I.R. 1931 Rang. 101 which is a case under corresponding provision of Income Tax Act is inapplicable.)

Limitation and escaped assessment.

The rule of limitation applies only where turnover has escaped assessment. The term escaped assessment does not mean escape from assessment. (A.I.R. 1934 Cal. 515). Turnover can be said to have escaped assessment only where it was not disclosed to or was not available before assessing authorities. Where proceedings for assessment are pending, turnover cannot be said to have escaped assessment. (A.I.R. 1931 Cal. 545). Where an assessment is set aside by a superior authority as not having been made properly, any reassessment in a proper manner is not governed by the period of limitation in this rule. In such a case the turnover cannot be said to have escaped assessment. (A.I.R. 1934 P.C. 30; A.I.R. 1934 Cal. 515; A.I.R. 1933 Lah. 284; A.I.R. 1931 Cal. 545; A.I.R. 1936 Lah. 897). But in the case of turnover which has escaped assessment, there can be no reassessment after the period of limitation fixed in the rule. (A.I.R. 1929 All. 919; A.I.R. 1927 Lah. 248. A.I.R. 1938 P.C. 175.)

Other cases of escaped assessment.

Where deduction has been erroneously or improperly allowed (A.I.R. 1933 Calcutta 777) or where an officer had adopted an erroneous construction of the Act (A.I.R 1926 Mad. 287) the turnover can be assessed later, on the ground of turnover having escaped assessment. Similarly, where a person has not been assessed at all, but has had turnover which is assessable, he can be reassessed (A.I.R. 1937 Bom. 214). Again, if an assessee escapes assessment by making a false return he can be reassessed after the falsity is discovered (31 S.L.R. 452).

What should be reassessed.

Only the turnover that has escaped assessment should be assessed. The entire assessment need not be reopened (A.I.R. 1931 Rang. 333).

In any year.

The words refer to the financial year [See Section 2 (j)] in which proceedings for assessment in respect of the turnover for that year should have been initiated (A.I.R. 1934 Cal. 575). Thus, for the year 1939—40 proceedings have to be initiated before the close of the financial year 1939—40 and re-assessment under the rule must take place before the close of the financial year 1940—41.

Who should act.

The assessing authority or the licensing authority alone should act under this rule. He alone has knowledge of the first assessment or licence. None else can act under the rule. [A.I.R. 1938 Cal. 557 (S.B.)]

Materials on which authority must act and notice.

An authority acting under this rule must act on materials and not merely on conjectures or on mere suspicion. Before proceeding to act under the rule and reassess or levy licence fee, he must indicate to the assessee or licensee the nature of the alleged escapement so that any explanation may be forthcoming. If the explanation offered is satisfactory, no action need be taken under this rule [A.I.R. 1938 Cal. 557 (S.B.)]. In any case the issue of a notice seems to be a condition precedent to reassessment (A.I.R. 1928 Mad. 257).

Form of Notice.

No particular form is prescribed. Even a letter containing the necessary details may be held to satisfy the requirements of notice (A.I.R. 1934 Cal. 515).

Continuation of proceeding against successor.

If a person on whom notice is served dies or if some other person has succeeded to the business of the assessee, no fresh notice is needed and the proceedings can be continued. (A.I.R. 1934 Mad. 63; A.I.R. 1937 Lah. 830.)

18. (1) An assessing, appellate or revising authority may, at any time within one year from the date of any order passed by him, rectify any mistake apparent from the record:

Provided that no such rectification which has the effect of enhancing the assessment shall be made unless the assessing authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing the assessment the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice in Form B appended to the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and thereupon the provisions of the Act, the said rules and these rules, shall apply as if such notice had been served in the first instance.

Comments.

This rule has been framed under Section 19 (2) (g).

Mistake means a slip made not designedly but by forgetfulness or mischance. [See 65 L.J. Q.B.74 and (1899) 2 Q.B. 273.] After the period of one year fixed in this rule rectification cannot be made (A.I.R. 1927 Lah. 421. Case under Income Tax Act). The rule covers only *bona fide* mistakes as to the manner in which assessments should be made (A.I.R. 1925 Pat. 352).

A case decided under Section 35 Income Tax Act illustrates what a 'mistake' is for the purpose of the Income Tax Act and for the purpose of this rule as well. A person who was really the owner of five concerns deliberately submitted returns separately for the five concerns as though the concerns belonged to different persons. But when the real fact was known to the authorities who proceeded to assess all the concerns together, the assessee applied for reduction of assessment pleading that there was a mistake and that another concern had sustained much loss. It was held that there was no mistake at all, much less a mistake apparent on the record as the act of assessee was deliberate. (A.I.R. 1925 Pat. 352.)

PART VI—MISCELLANEOUS.

19. If a dealer or licensee enters into partnership in regard to his business, he shall report the fact to the assessing authority within 30 days of his entering into such partnership. The dealer or licensee and the partner shall jointly and severally be responsible for the payment of the tax leviable under the Act.

20. If a partnership is dissolved every person who was a partner shall send a report of the dissolution to the assessing authority within 10 days of such dissolution.

21. If the business carried on by any dealer or licensee is discontinued, the dealer or licensee or, if he is dead, the legal representative shall notify to the assessing authority the fact of discontinuance of the business within one month of the discontinuance.

Comments. [Rr. 19 to 21.]

These rules have been framed under Section 19 (2) (c).

22. In the case of any guardian, trustee or agent of any minor or other incapacitated person carrying on a business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such minor or other incapacitated person, if he were of full age or sound mind and if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

Comments.

This rule has been framed under Section 19 (2) (d).

23. In the case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any Receiver or Manager (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by, or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in like manner and on the same terms as it would be leviable upon and recoverable from the dealer if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

Comments.

This rule has been framed under Section 19 (2) (e).

24. An assessing or licensing authority may require any person whose evidence he considers necessary for the purpose of any enquiry under the Act, or the rules made thereunder to appear before him and give evidence.

If the assessing or licensing authority is not lower in rank than a Deputy Commercial Tax Officer, such authority may examine such person on oath or affirmation.

25. An assessing or licensing authority shall have all the powers conferred on a court by the Code of Civil Procedure, 1908, for the purpose of securing the attendance of persons or the production of documents.

Comments.

This rule provides for the use of powers conferred on courts under the Code of Civil Procedure for securing the attendance of witnesses or the production of documents. The powers in particular are exercised under Order 12 rules 10 and 12. Courts have the power (1) to issue a proclamation for the attendance of recalcitrant witnesses, and (2) to order arrest or attachment of the property of such witness. Under Order 12 rule 12 courts have power to fine recalcitrant witnesses for their absence.

26. The assessing or licensing authority shall issue a summons for the production of a document or the appearance of any person in Form IX.

27. The powers conferred on an assessing or licensing authority by rules 24 to 26 may also be exercised by an appellate or revising authority.

Comments. [Rr. 26 and 27.]

These rules have been framed under Section 19 (2)(h).

28. The service on a dealer or licensee of any notice, summons or order under the Act or the rules made thereunder may be effected in any of the following ways, namely :—

(a) by giving or tendering it to such dealer or licensee or his manager or agent ; or

(b) if such dealer or licensee or his manager or agent is not found, by leaving it at his last known place of business or residence or by giving or tendering it to some adult member of his family ; or

(c) if the address of such dealer or licensee is known to the assessing authority, by sending it to him by registered post ; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

Comments.

This rule sets out the mode of service of notices and summons.

Where notice is a condition precedent to the initiation of proceedings, Its absence would invalidate the entire proceedings (53 Mad. 921).

(a) *Manager or agent.* [Cp. order 5 Rule 13 C.P.C.]

"The manager or agent contemplated by the rule is one who has an initiative and independent discretion. A mere servant simply employed to do a particular work ....is not an agent or manager within the meaning of the rule." [Chitaley's C.P.Code Volume II (2nd Edition) page 1230]. See also cases cited therein.

(b) "*is not found*" [Cp. Order 5 Rules 15 and 17].

It is not clear whether these words have the same meaning as the words "cannot be found" used in Order 5 rules 15 and 17 C.P. Code or whether the words cover even temporary absence of assessee or licensee or manager. A proper view seems to be to hold that before clause (b) is invoked, all reasonable attempts should be made to effect service as contemplated in clause (a). (See 19 Cal. 201.)

(c) *Registered post.* See Clause 27 General Clauses Act.

(d) The operation of this clause can arise only if the other modes are not practicable. Affixing must be in conspicuous place. Leaving summons in a teapoy in an assessee's house is insufficient (A.I.R. 1929 Bom. 257. Case under C.P.C.). Similarly, affixing at a place where an assessee never resided or carried on business is insufficient.

29. The following authorities may exercise the powers specified in section 16 :—

(a) the Deputy Commercial Tax Officer subject to the control and direction of the Commercial Tax Officer and the Board of Revenue, and

(b) the Commercial Tax Officer subject to the control and direction of the Board of Revenue.

Comments.

This rule must be read with Section 16.

The power of compounding must not be so exercised as to extort an unreasonably large sum of money under threat of prosecution [(1929) 4. I.T.C. 97.]

30. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made, in the course of any proceeding under the Act or the rules made thereunder, or in any record of any proceeding relating to the recovery of a demand, prepared for the purpose of the Act or the rules made thereunder, shall be treated as confidential and the illegal disclosure of such particulars by any officer shall be dealt with severely.

(2) Nothing in sub-rule (1) shall apply to the disclosure—

(i) of any such particulars for the purpose of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit, or deposition, or for the purpose of a prosecution under the Act or the rules made thereunder, or

(ii) of any such particulars to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the rules made thereunder, or

(iii) of any such particulars occasioned by the lawful employment under the Act or the rules made thereunder of any process for the recovery of any demand, or

(iv) of any such particulars to a civil court in any suit to which the Government are a party, which relates to any matter arising out of any proceeding under the Act or the rules made thereunder, or

(v) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document.

Comments.

This rule has been framed under Section 19 (2) (i). This rule (i) similar to Section 54 Income Tax Act. This rule, like Section 54 Income Tax Act is enacted for the purpose of encouraging assessees to make a full and free disclosure of all relevant facts. (A.I.R. 1934 Nag. 181). The purpose of the rule is to make the materials placed before officers confidential as between the officers and assessees and against the whole world except for the limited purposes mentioned in the rule (A.I.R. 1938 Rang. 276). Certified copies of returns, etc., cannot be obtained (A.I.R. 1938 Rang. 276). It is not clear whether the rule prohibits even evidence that account books have been produced before an authority under the Act. (See A.I.R. 1935 Lah. 272 where Section 54 was held to exclude even such evidence. But terms of Section 54 seems wider than the present rules.)

31. Where any payment by cheque is permitted by rules made under the Act, the cheque shall be such as under the Madras Treasury Code is receivable by the Government treasury concerned.

Comments.

This rule must be read with rule 13 (1) & (2) and rule 15 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules which provide for the issue of cheque by assessees.

32. Whoever commits a breach of any of the following rules, namely, rules 6 (9), 6 (10), 11, 12, 19, 20 and 21 shall, on conviction by a Presidency Magistrate or a Magistrate of the First-class, be punishable with fine which may extend to one thousand rupees,

and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

Comments.

This rule must be read with Section 19 (3) and Section 15. (See commentary to Section 15 where the words used in this rule are used. pp. 61 to 70.)

33. Where a Form has been prescribed by the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, or these rules for the keeping or maintaining of any accounts or for the submission of any return, only the appropriate Form printed under the authority of the Provincial Government shall be used for the purpose.

FORM I.

Application for licence.

[*See* rules 5 and 6 (2).]

To

The Licensing Authority.

Sir,

I/We residing at taluk district, request that I/we may be granted a licence (or my/our licence No. , dated may be renewed) for the year ending the 31st March 19 —

(*a*) for dealing in
bullion and/or specie
cotton and/or cotton yarn
cloth woven on handlooms
hides and/or skins
hides and/or skins as a tanner.

Or

(*b*) for buying and selling goods for an agreed commission or brokerage on behalf of persons (including firms) in the Province.

2. I/We enclose a $\frac{\text{treasury receipt}}{\text{cheque}}$ for Rs. (in words) only being the fee for the licence.

3. My/Our $\frac{\text{turnover}}{\text{estimated turnover}}$ for the year* $\frac{\text{was}}{\text{is}}$ Rs. (in words) only.

4. A description of my/our place of business is given below.

5. In addition to the business for which licence is applied for $\frac{\text{I}}{\text{we}}$ deal in the following goods.

Signature of applicant(s)

* **NOTE.**—(1) The turnover for the year immediately preceding the year for which application is made should be furnished.

(2) In the case of new businesses estimated turnover for twelve months should be given.

(3) The turnover entered in item 3 should relate only to the dealings in respect of which licence is applied for.

(4) Item 3 need not be filled in in the case of renewal applications.

(5) An applicant for a licence for dealing in cloth woven on handlooms must append a declaration as follows:—

"I hereby declare that I deal exclusively in cloth woven on handlooms."

NOTE.—Where payment is made by cheque, the cheque should be such as under the Madras Treasury Code is receivable by the Government treasury concerned.

FORM II.

Licence to a dealer in bullion and/or specie.

[*See* rule 6 (5).]

License No. dated

having paid a licence fee of Rs. (in words) only is hereby licensed as a dealer in bullion and/or specie for the year ending at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder and to the following conditions:—

(1) This licence extends only to dealings in bullion and/or specie and not to ornaments or other finished articles of precious metal.

(2) Licensees who do not submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(3) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date..... ....

Licensing Authority.

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM III.

Licence to a dealer in
cotton
cotton yarn
cloth woven on handlooms.

[*See* rule 6 (5).]

Licence No. , dated

having paid a licence fee of Rs.
(in words) only is hereby licensed as a dealer in
cotton
cotton yarn for the year ending
cloth woven on handlooms
at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder and to the following conditions :—

(1) Licensees who do not submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(2) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date..................

Licensing Authority.

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM IV.

Licence to a
tanner
dealer in hides and/or skins.

[*See* rule 6 (5).]

Licence No. dated

having paid a licence fee
of Rs. (in words) only is hereby licensed as a
tanner
dealer in hides and/or skins for the year ending
at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder.

No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date..................

Licensing Authority.

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of Licensing Authority.

FORM V.

Licence under section 8 of the Madras General Sales Tax Act, 1939.

[*See* rule 6 (5).]

Licence No. dated

having his place of business at

and having paid a licence fee of Rs.

(in words) only is hereby licensed under section 8 of the Madras General Sales Tax Act, 1939, subject to the provisions of the said Act and the rules made thereunder and to the following conditions :—

(1) The licensee shall submit to the undersigned on or before the last day of every month a return in Form VI for the preceding month.

(2) The licensee shall be exempt from the tax payable under section 3 (1) of the Madras General Sales Tax Act, 1939, only to the extent to which the goods bought or sold through him are included in the turnover of the principals or of the dealers from whom purchases were made.

(3) This licence shall not apply to the transactions of the licensee otherwise than for an agreed commission or brokerage on behalf of known principals (including firms) in the Province specified in his accounts or to the transactions of the licensee on behalf of principals outside the Province.

(4) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place............

Date............

Licensing Authority.

Renewal of licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM VI.

Return to be submitted by a person licensed under section 8 of the Madras General Sales Tax Act, 1939.

[*See* rule 6 (9).]

Name(s) of the licensee(s)—

Place of business—

Licence No..................dated.....................

1. During the month I/we have acted as—

(*a*) selling agent(s) for the following principals (give names and addresses) :—

Total amount for which sales were effected—

(*b*) buying agent(s) in groundnut / tobacco leaf / cashew / untanned hides and/or skins for (give names and addresses);

Total amount for which purchases were made—

(*c*) buying agent(s) in respect of other articles for (give names and addresses).

Total amount for which purchases were made—

Grand total under (*a*), (*b*) and (*c*)—

2. The amount for which I/we sold goods purchased from dealers resident outside the Province to my/our principals under (*c*) is Rs.....................

I/We declare that to the best of my/our knowledge and belief the information furnished in the above return is true and complete and that it relates to the month of.......................

Signature of licensee(s).

NOTE 1.—The turnover of transactions carried out on behalf of principals resident outside the Province should be included in a return in Form A, A-1 or A-3 as the case may be under the Madras General Sales Tax (Turnover and Assessment) Rules and not in this return.

NOTE 2.—If any of the transactions included in paragraph 2 above relate to hides and skins or to articles exempted from taxation under the Act, the turnover of such articles should be shown separately in respect of each class of such articles.

FORM VII.

Annual Return submitted by licensees other than dealers in hides and skins.

[*See* rule 6 (10).]

Name(s) of the licensee(s)—

Place of business—

Licence No..............dated.................

During the year ending the 31st March...........the turnover of my/our business has been as follows:—

	Rs.	A.	P.
1. Transactions covered by the licence—			
(i) Bullion and/or specie			
(ii) Cotton			
(iii) Cotton yarn			
(iv) Cloth woven on handlooms ...			
(v) Agency business			
2. Business not covered by the licence ...			
Total ...			

I/We declare that to the best of my/our knowledge and belief the information furnished in the above return is true and complete and that it relates to the year ending 31st March.................

Signature of licensee(s).

FORM VIII.

Application for rebate under section 7 of the Madras General Sales Tax Act, 1939.

[*See* rule 9.]

I/We.................residing at..................taluk.................district request that I/we may be granted a rebate of tax under section 7 of the Madras General Sales Tax Act, 1939, in respect of the sale of goods specified below:—

1 Name(s) and postal address(es) of applicant(s).

2 Nature and description of articles sold.

3 Aggregate amount for which sold.

4 Name(s) and address(es) of person(s) to whom sold.

5 In the case of assessees under rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the month in which the amount under item 3 was included in the return of turnover.

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of.................

Place.................

Date.................

Signature of applicant(s).

Comments.

A representation was made "that the submission of the details relating to the names and addresses of persons to whom sales are made which is required in item 4 of the application for rebate in Form VIII will involve heavy clerical work and should be dispensed with." The Government, however considered "that the information is necessary in order to safeguard public revenues and that the form should not be amended as suggested. Assessing authorities have, however, been authorised to make exceptions in cases requiring it." *(Press Communique issued by the Ministry of Public Information.)*

FORM IX.

Form of Summons under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939).

[*See* rule 26.]

Summons to appear in person and or to produce documents.

To

Whereas your attendance

Whereas the following documents (here describe the documents is necessary to give evidence

in sufficient detail to permit of their identification with reason-

able certainty) are required with reference to an inquiry under the

Madras General Sales Tax Act, 1939 (here enter briefly the subject of the inquiry) now pending before me, you are hereby summoned

to appear in person
to produce, or cause to be produced, the said documents ——— before
me on the...........day of..................19 , at o'clock at (place) (and not to depart thence until permitted by me).[*]

Given under my hand and seal this...........day of.............. 19 .

(Seal)

Signature.
Official Designation.

---

[*] These words should be omitted where the summons is for the production of documents only.

NOTIFICATIONS.

I

In exercise of the powers conferred by clause (*a*) of section 2 and sub-sections (1) and (2) of section 14 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased—

(1) to authorize—

(*a*) Assistant Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover does not exceed twenty thousand rupees; and

(*b*) Deputy Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover exceeds twenty thousand rupees;

Provided that—

(i) in the case of a dealer carrying on business in more than one revenue taluk within the same revenue district, the assessing authority shall be the Deputy Commercial Tax Officer of the revenue district concerned; and

(ii) in the case of a dealer carrying on business in more than one revenue district, the assessing authority shall be the Deputy Commercial Tax Officer of the revenue district in which the head office of the said dealer is situated and if such head office is outside the Province, the Deputy Commercial Tax Officer of such one of the revenue districts concerned as the Board of Revenue may by general or special order authorize in that behalf;

(2) to empower all Commercial Tax Officers, Deputy Commercial Tax Officers, and Assistant Commercial Tax Officers to require dealers carrying on business in any kind of goods to produce before them, the accounts and other documents, and to furnish any other information relating to such business; and

(3) to authorize all officers of the Revenue Department not lower in rank than a Revenue Inspector, all officers of the Excise and Police departments not lower in rank than a Sub-Inspector and all Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers to inspect at all reasonable times the accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and their offices, shops, godowns, vessels or vehicles.

(Fort St. George Gazette, September 12, 1939.)

Comments.

Clause (1) of this Notification must be read with Section 2 (a) of the Act. Clauses (2) and (3) of this Notification must be read with Section 14 (1) (2) of the Act.

II

FINISHED ARTICLES OF INDUSTRIAL MANUFACTURE ON WHICH REBATE WILL BE ALLOWED.

Fort St. George, September 19, 1939.

(G. O. No. 2435, Revenue)

No. 845.

In exercise of the powers conferred by section 7 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to notify the following finished articles of industrial manufacture as those in respect of which a rebate shall be allowed under the said section:—

Articles.

1 Agricultural implements and appliances.
2 Aluminium ware.
3 Bone grists, bone meals, steamed horn and hoof meal, steamed and unsteamed leather meals.
4 Bricks and tiles.
5 Chemicals.
6 Carpets.
7 Cement.
8 Coffee as roasted berries or powder.
9 Coir manufactures.
10 Condiments.
11 Confectionary.
12 Cotton cloth including surgical wadding.
13 Electroplated ware.
14 Enamelware.
15 French Polish.
16 Furniture and other wood manufactures.
17 Glassware.
18 Hosiery.
19 Ice and dry ice.
20 Industrial machinery and other products of engineering works, workshops, founderies, etc.
21 Ink.
22 Jewellery.

23 Jute manufactures.
24 Lace.
25 Leather goods, and boots and shoes.
26 Manures.
27 Matches.
28 Medicinal preparations.
29 Metalware.
30 Oil cakes and vegetable oils.
31 Paper.
32 Pencils.
33 Pith helmets.
34 Pottery and ceramic goods other than pipes.
35 Printers' type, spacing materials and furniture.
36 Quinine.
37 Roofing felt.
38 Ropes.
39 Sandalwood oil
40 Silk goods.
41 Silverware.
42 Soaps.
43 Steel manufactures.
44 Sugar.
45 Umbrellas—Assembled.
46 Woollen manufactures other than carpets.

Comments.—This notification must be read with Sec. 7 of the Act and Rr. 9 and 10 General Sales Tax Rules.

III

The General Sales Tax Act and Rules are not in force in the Railway lands in Madras States. [*See G. O. 1392 Public (Political) published in Fort St. George Gazette dated 5—9—39. Part I, p. 1108.*]

AGENCY TRACTS

IV

Madras General Sales Tax Act applied to Agency tracts.

The Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), (hereinafter referred to as the said Act), shall, with effect on and from the 1st day of October 1939, apply to the partially excluded areas in the Province of Madras, subject to the following modifications, namely:—

In the said Act—

(i) sub-section (3) of section 1 shall be omitted.

(ii) the proviso to sub-section (2) of section 3 shall be omitted; and

(iii) in sub-section (4) of section 19, for the words "shall be subject" the words "shall, except on the first occasion of the exercise thereof, be subject" shall be substituted.

(*Fort St. George Gazette Part I p. 1226 dated 26—9—39*).

V

Applicability of the Rules and Notifications.

The Madras General Sales Tax (Turnover and Assessment) Rules, and the Madras General Sales Tax Rules have been adapted in their entirety to the Partially Excluded Areas. The rules as applied to the Partially Excluded Areas are known as the "Madras (Partially Excluded Areas) General Sales Tax (Turnover and Assessment) Rules, 1939" and the "Madras (Partially Excluded Areas) General Sales Tax Rules." *(Fort St. George Gazette dated 26th September, 1939, Part I, pp. 1239 to 1248.)*

Similarly notification I issued under Cl. (a) of sec. 2 and Sub-sections (1) and (2) of section 14 has also been adapted to the Partially Excluded Areas.

As no material changes have been made in the rules forms or notifications, as applied to the Partially Excluded areas except in regard to the name given to the rules they are not printed.

Comments.

Notifications III to V may be read with Ss. 1(2) and 2(g) of the Act as they show the extent of operation of the Act. (See. p. 14 commentaries.)

The Act and Rules are in force throughout the Madras Province including also Agency tracts, Railway lands in Madras states alone being excepted.

The changes introduced in the Act in its application to the Agency tracts are necessitated by the Constitutional position of the Areas under the Government of India Act, 1935.

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Errata and Corrigenda.

P. xxii line 7 for "Sale services" read as "Sale of Services"

P. xix line 23 for "Construction of Exemptions" read as "Construction of Exceptions"

P. 16 last line of para 2 in "Sale and it must" delete "and"

P. 25 para 4 for "horticultural produces" read "horticultural produce"

P. 27 para 2 line 3 delete "wholesale"

P. 30 line 4 for "Exceptions" read as "Exemptions"

P. 31 In footnote "2 Rules relating" delete 2.

P. 44 in line 20 from top and in line 6 from bottom for "return" read as "turnover"

P. 44 in line 23 for "if it is correct" read as "if to the satisfaction of the assessing authority it is correct"

P. 55 para 3 line 2 for "an application" read as "on application"

P. 59 second line from bottom for "are open" read as "is open"

P. 66 para 3 in "evades of payment" delete "of"

P. 67 fourth line from bottom for "I.P.C." read as "Cr.P.C."

P. 97 footnote 7 for "outside the Province. They" read as "outside the Province, they"

P. 127 line 21. "This rule (1)" read as "This rule is"

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